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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT, *et al.*,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether sovereign immunity bars a quiet title action where the State claims ownership as a result of an invalid judgment.

2. Whether sovereign immunity is a defense to an unconstitutional taking of land without any compensation.

3. Whether a State Court referee can pass title to land for airport purposes in contravention to the Federal Land Acquisition Act.

4. Whether an invalid judgment by a state court referee violates due process of law.

LIST OF PARTIES

The parties to the proceeding below were Petitioner Augustus J. Simmons, and the following Respondents: State of Connecticut, Connecticut Department of Transportation.

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STATE OF CONNECTICUT, *et al.*,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Augustus J. Simmons, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Connecticut entered on February 28, 1991.

OPINIONS BELOW

The opinion of Judge Ripley, Superior Court is reprinted in the Appendix as Appendix C, *infra*, App. 8-10. The "Per Curiam" decision of the Connecticut Court of Appeals, 24 Conn. App. 801 is set forth as Appendix D, App. 11. The Order on Petition for Certification to Appeal

to the Connecticut Supreme Court is set forth in Appendix E, App. 12.

JURISDICTION

The jurisdiction of this Court to review the judgment of the Connecticut Supreme Court is conferred under 28 U.S.C. Section 1257(a)

STATUTES INVOLVED

The statute involved in this action is the Uniform Land Acquisition Act, Public L. 91-646, Title I, § 102, Jan. 2, 1971, 84 Stat. 1895, and the regulations promulgated under said act. The action also concerns the Connecticut Quiet Title Statute, C.G.S. § 47-31 and Connecticut statutes applicable to condemnation, namely C.G.S. § 48-12 and C.G.S. § 8-129, and the Uniform Land Acquisition Act.

STATEMENT OF THE CASE

This case represents the latest chapter in a twenty-nine year old dispute concerning land adjacent to Bradley Field. Petitioner, Augustus Simmons, acquired the land from his mother in 1964. From 1962 to 1971, the State of Connecticut attempted to condemn the land on two separate occasions, but was unsuccessful. In 1962 the State entered a notice of condemnation on the land records, without compensation. At that time the Federal Agency began installing a portion of the instrument landing

system. This condemnation was set aside by the Connecticut Supreme Court in *State of Connecticut v. Simmons,* 155 Conn. 502 (1967). A second condemnation attempt was made under redevelopment statutes rather than airport related statutes. This action was instituted in 1968 and ruled null and void in 1971 by the Connecticut Supreme Court in *Simmons v. State of Connecticut,* 160 Conn. 492 (1971). In spite of no further condemnation efforts by the State of Connecticut, the State entered into a lease with the FAA in 1974 to install a middle marker landing system on land owned by Mr. Simmons which had been the subject of the two condemnation actions.

In 1977 appellant was successful in an ejectment action against the State of Connecticut and the Federal Aeronautics Administration. In that case, *Simmons v. Parizek,* Superior Court No. 162923, the court awarded rental damages to Simmons for the period from 1964 to 1969 and ordered the State and the FAA to vacate the property.[1] While this action was pending, the petitioner brought an action in Federal District Court against the State of Connecticut and various state officials under the Civil Rights Act of 1964 [28 U.S.C. § 1983]. In its decision of January 19, 1973, the Court of Appeals for the Second Circuit, on appeal from dismissal of the complaint, reversed and remanded with orders to stay the action in District Court pending resolution of the boundary dispute in the ejectment action.[2]

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[1] Neither the State nor the FAA appealed the decision. However the decision was also not complied with. The decision is set forth, in part, at p. 14 of the Appendix.

[2] 472 F.2d 509 (2nd Cir. 1973)

In 1974, Petitioner brought another action in District Court against the State of Connecticut and the FAA. The action sought an injunction against federal funding where the title to the land had not been acquired for the land where instrument lighting system was located and taxes were still being paid by the petitioner. The injunction was denied on November 5, 1974, without prejudice and with the added note that if the State unduly delayed the litigation, the plaintiff could renew his claim.[3]

A second ejectment action for damages for the period from 1969 to the conclusion of acquisition of the land was filed in 1977, Superior Court Number 199230. In 1970, the Connecticut legislature passed special legislation authorizing Simmons to sue the State for damages to his land due to the abortive condemnation efforts of the State. The damage action, *Simmons v. Wetherall,* was assigned to Referee Shapiro for a hearing in damages.

During the pendency of the attempts to condemn Mr. Simmons' property, the Uniform Real Property Acquisition Act (P.L. 91-646)[4] was enacted. This statute imposed constraints upon both the federal and state governments where federal funding and or federal projects were involved. It is clear that the Uniform Act applied to the State of Connecticut's attempts to acquire Mr. Simmons'

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[3] Ruling on Plaintiff's Motion for a Preliminary Injunction, Judge Clarie, dated November 5, 1974, Case No. H-74-148.

[4] The relevant portions of the Uniform Act are set forth at pages 52-57 of the Appendix.

property. Rather than comply with the Uniform Act, Referee Shapiro backdated his order to 1964 before the passage of the Act.

On January 4, 1978, a stipulated judgment was entered into between the State of Connecticut and Simmons. The judgment provided five pending cases (two ejectment actions, one damage action, and two injunction actions) would be consolidated and reopened. The judgment further provided that the State would pay the sum of $385,600 to Simmons for the property.[5] The judgment, by its terms, did not require any action on the part of Simmons, it did not even require Simmons to execute a deed.

The stipulated judgment, in essence, was a purchase agreement reduced to a judgment. The judgment did not deal with the issue of damages for the use of the land nor did it provide any damages for the prior condemnation actions. When Simmons refused to execute a deed and his attorneys withdrew from the case, Referee Shapiro issued a supplemental judgment on June 2, 1978.[6] The supplemental judgment was in response to a Motion for Execution. The supplemental judgment expanded the terms of the original judgment and required the State of Connecticut to cite all parties with an interest in the property before the court and determine their interests and secure releases. The State did not comply with that aspect of the judgment and has still not complied with that aspect of

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[5] The stipulated judgment is set forth in the Appendix at pp. 13-17.

[6] The supplemental judgment, which was recorded on the land records, is set forth in the Appendix at pp. 18-31.

the judgment. The supplemental judgment, however, required the State to cite all of the lienholders into court and to secure releases.

On June 4, 1978, appellant, appearing *pro se* filed a Motion to Reopen the Judgment. This motion was denied by Referee Shapiro and appealed to the Connecticut Supreme Court. The appeal was filed under Docket #202121, *State of Connecticut v. Augustus Simmons,* which was an injunction action against Simmons for removal of airport fences that had been installed on his property. The action had no relationship to the issue of acquisition of the land and did not have all of the necessary parties to the action, i.e. the various mortgage and lienholders on the property. In *Simmons v. Wetherall,* 180 Conn. 587 (1980), the court upheld Referee Shapiro's refusal to reopen the judgment. The court did not reach any of the jurisdictional questions with respect to the judgment of Referee Shapiro nor did it consider the effect of the Uniform Act on the attempted acquisitior of Mr. Simmons' property.

Since the decision in *Simmons v. Wetherall,* there have been numerous Federal and State cases which have attempted to attack the judgment of Referee Shapiro as having been outside of his jurisdiction. None of the cases have ever reached this issue as the State has been successful in having all of the cases dismissed on the basis of sovereign immunity or other procedural grounds. In spite of the State's assertion that Referee Shapiro's judgment is valid, the State, in a subsequent hearing took the position that the decision of Referee Shapiro was invalid, unenforceable, and outside of his jurisdiction as a referee.[7] More

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[7] The parties were before the court on a motion for payment filed by two lienholders on the property. These

(Continued on following page)

importantly, the State has never complied with the judgment of Referee Shapiro except to put the funds on deposit. The State has never bothered to cite the lienholders into court and twelve years after the judgment of Referee Shapiro individuals with valid liens have still not been paid and the State does not have clear title to the land.

The instant case was filed as a quiet title action under C.G.S. 47-31.[8] Although the quiet title provisions do not specifically apply to the State, the statute does not exclude bringing the State in as a party where the State claims an interest in the property. The complaint alleged that the State claimed an interest in the land and that the State's taking of the land without compensation violated the Constitution and was thus an unconstitutional taking.

On July 19, 1989, defendants State of Connecticut and Department of Transportation filed a Motion to Dismiss alleging sovereign immunity and lack of jurisdiction. On July 28, 1989, the plaintiff filed an amendment complaint. On August 7, 1989, the State renewed its Motion to Dismiss. The case was then transferred to Federal Court by the Federal Aeronautics Commission [herein referred to

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(Continued from previous page)

lienholders had never been served with the supplemental judgment, never had been made parties, and sought payment of their liens. The position of the State is set forth at pages 32-45 of the Appendix.

[8] The provisions of C.G.S. 47-31 are set forth in the Appendix. It should be noted that the decision of Referee Shapiro specifically provided that additional proceedings could be brought under this section.

as "FAA"] and ultimately returned to the State Court after withdrawal of the case with respect to the FAA. On February 5, 1990, the Motion to Dismiss was heard by Judge Ripley. The petitioner's claim that Referee Shapiro lacked jurisdiction and that his decision violated federal law was squarely presented to the court in the legal memoranda submitted to the court and in oral argument before the court. Judge Ripley issued his decision granting the Motion to Dismiss on the grounds of sovereign immunity without reaching the constitutional or federal law issues.[9]

On January 7, 1991, an appeal of the dismissal was heard by the Connecticut Court of Appeals. The appeal again raised the federal issues of denial of due process of law, an unconstitutional taking without "just compensation" and violation of Uniform Land Acquisition Act. The Court of Appeals denied the appeal "Per Curiam" on January 22, 1991.[10] On February 28, 1991, the Connecticut Supreme Court denied the Petition for Certification.[11]

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[9] Judge Ripley's decision is set forth in the Appendix at pages 8-10.

[10] The Per Curiam notification is set forth in the Appendix at page 11. It is important to note that petitioner attempted to bring the case directly to the Connecticut Supreme Court which is normal where the State is a party.

[11] The Order denying the petition is set forth in the Appendix at p. 12.

REASONS FOR GRANTING THE WRIT

I. IF A STATE IS IMMUNE FROM A QUIET TITLE ACTION, THEN THERE IS NO REMEDY FOR AN INDIVIDUAL WHOSE LAND HAS BEEN TAKEN WITHOUT COMPENSATION.

The decision of the Connecticut Supreme Court not to hear petitioner's case results in an unconstitutional taking of land without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

The action was filed as a quiet title action under C.G.S. 47-31(f) which provides in relevant part:

> The court shall hear the several claims and determine the rights of the parties, whether derived from deeds, wills or other instruments or sources of title, and may determine the construction of the same, and render judgment determining the questions and disputes and quieting and settling the title to the property.

The State claims ownership of the land in dispute pursuant to a stipulated judgment of January 4, 1978 [Appendix pp. 13-17] and a supplemental judgment of June 2, 1978 [Appendix pp. 18-31] issued by a trial court referee. If sovereign immunity is a total defense to a quiet title action where the State claims ownership of the land, then the petitioner has no legal means of redressing the unconstitutional taking of his land. This is especially true where the State has admitted in subsequent litigation that the decision of the referee is invalid and outside of the scope of his jurisdiction.

The decision of Referee Shapiro, which the State relies upon, specifically provides that further proceedings

can be instituted through C.G.S. 47-31, yet when petitioner attempted to do so, the case was dismissed on grounds of sovereign immunity.

The writ should be granted to determine whether a State can shield itself from its own procedures with respect to quieting title to land and thus deprive a landowner from a remedy where the State claims ownership of the land and the petitioner claims an unconstitutional taking in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

II. THE TAKING OF LAND FOR AIRPORT PURPOSES WITHOUT FOLLOWING STATE LAW WITH RESPECT TO CONDEMNATION PROCEEDINGS IN RELIANCE ON AN INVALID JUDGMENT VIOLATES DUE PROCESS OF LAW.

A. The court violated due process of law by failing to follow its own rules with respect to Motions to Dismiss.

The lower court granted the Motion to Dismiss on the grounds of sovereign immunity. The court held that the complaint failed to allege a taking in the constitutional sense citing *Horak v. State,* 171 Conn. 257, 261 (1976). This is clear error. In *Horak* the plaintiff's land was condemned and a condemnation award was made. Following payment, the plaintiff filed an action for damages for the delay in the condemnation award. There was no allegation in the complaint of an unconstitutional taking.

Under Connecticut civil procedure for purposes of a Motion to Dismiss, the factual allegations of the complaint must be construed in a manner most favorable to the plaintiff and "every presumption must be indulged

which favors the jurisdiction of the court. *Brewster v. Brewster,* 152 Conn. 228, 233 (1964); *Brown v. Cato,* 147 Conn. 418, 419 (1960). An examination of the factual allegations of the complaint shows that the complaint alleges an unconstitutional taking of the appellant's property without just compensation, in fact, without any compensation. Accepting the well pled allegations as true compels a finding that the complaint alleges an unconstitutional taking and thus sovereign immunity is not available as a defense. As stated in *Horak*:

> The complaint, to survive the defense of sovereign immunity must allege sufficient facts to support a finding of a taking of [property] in a constitutional sense.

The same rule was set forth in *Simmons v. Parizek,* 158 Conn. 304, 307 (1969) where the Court held:

> Sovereign immunity does not protect state officials from suits to recover property taken or held in violation of the Constitution or without statutory authority, even though the property is held in the name of the state of Connecticut.

The motion to dismiss tests whether on the fact of the record, the court is without jurisdiction. In the instant case, there are clearly sufficient factual allegations which if accepted as true, demonstrate a taking in the Constitutional sense thus the Motion to Dismiss should have been denied. For the State of Connecticut to set idly by for eleven years yet raise this judgment as a basis for its claim of ownership is a violation of due process of law and the taking of property without just compensation, in fact, without any compensation.

B. Sovereign immunity is not a valid defense to an unconstitutional taking of land.

The courts of Connecticut have held that the doctrine of sovereign immunity is not available to the state as a defense to claims for just compensation arising under Article I, Section 11 of the Connecticut Constitution. *Textron v. Wood*, 167 Conn 334, 342 (1971). It has also been held that "where the state takes property no specific permission to sue is necessary". *Anselmo v. Cox*, 135 Conn. 78, 81 (1948). In spite of the clear prior rulings of the Connecticut Supreme Court, the court refused to hear the Petition for Certification and thus deprived petitioner of a means of redress for the unconstitutional taking of his property without "just compensation", in fact without any compensation is unconscionable.

The unconstitutionality of the State of Connecticut's taking of petitioner's property is clearly a federal issue since the land was taken for airport purposes. Instead of employing legal proceedings to condemn the petitioner's property, the State took the land on the basis of a stipulated judgment in the damage action that had been filed by the petitioner. The damage action had nothing to do with the ownership of the land and thus the court had no jurisdiction over the question of ownership of the land. The unconstitutionality of this action is illustrated by the fact that the Referee backdated the ownership of the land to 1964 thus overruling a prior decision of the Connecticut Supreme Court which denied the State's attempt to condemn Mr. Simmons' property and order the property revested to Mr. Simmons. The Federal Aeronautics Administration installed navigational instrumentation on

Mr. Simmons' property without the State having first acquired the land.

The writ should be granted to determine whether sovereign immunity is a valid defense to the taking of land without payment of any compensation.

III. THE REFEREE BACKDATED THE TITLE TO THE TAKING OF THE LAND TO AVOID THE EFFECT OF THE FEDERAL LAND ACQUISITION THEREBY VIOLATING FEDERAL LAW AND A STATE SHOULD NOT BE IMMUNE FROM A SUIT BASED UPON VIOLATION OF FEDERAL LAW.

The land in dispute was part of an FAA project to acquire a "Doolittle clear landing area" for Bradley Field. Since the state was acquiring land for airport purposes, the acquisition of the land must be under the procedures set forth in the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.). Under this act, the States must follow the federal regulations to the "greatest extent possible." This legislation has been found to be within the legislative power of the federal government and thus applicable to the states and overriding any claim of sovereign immunity. *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976).

In *Parden v. Terminal R. Co.*, 377 U.S. 184 (1963), the Supreme Court first considered a State's claim of immunity against suit by an individual based upon a cause of action expressly created by Congress. The Court held that once a state ventured into the realm of interstate commerce, no claim of sovereign immunity could be raised. In the instant case, the regulation of the airlines and airports is within the authority of the United States under the Commerce Clause of the Constitution. The Uniform

Act applies to the acquisition of real property for a federal or federally assisted project. Since this act is within the federal government's power under the commerce clause, sovereign immunity does not apply under *Parden v. Terminal R. Co., supra.*

The Uniform Federal Act preempts C.G.S. 13b-50(d) with respect to acquisition of the parcel and sovereign immunity is not available as a means of defeating the requirements of the Uniform Act. A review of the record in this case shows that Referee Shapiro attempted to backdate the transfer of the land from 1978 to 1964 to avoid the requirements of the Uniform Act. This backdating, however, is contrary to the provisions of C.G.S. 52-22 with respect to equity powers of a court to transfer title to land. Although a court sitting in equity may transfer title to land, it is clear that such transfer takes effect as of the date of the decree and there is no jurisdictional power for the court to backdate the transfer.

One of the central issues in the action is the applicability of the Uniform Act. If the Uniform Act is not applicable, then sovereign immunity may be a valid defense. However, if the Act is applicable, then the state's claim of sovereign immunity must be denied. In *New Haven v. East Haven,* 35 Conn. Supp. 157 (1977), the appellate court held that acquisition of land for the clear and approach zones of the New Haven Airport was to be made in accordance with the Federal Regulations. By its terms the Federal Act is applicable to every state. In *City of Columbia v. Costle,* 710 F.2d 1009 (1983) the court held: The precise language of § 4655 indicated that a state must be guided "to the greatest extent practicable under state law" by the § 4651 procedures. The city argued that to

follow the Uniform Act would make it difficult for the city to acquire easements as gifts or for nominal sums. The court held that compliance with the act was mandatory and did not depend on any alleged economic benefit to the acquiring agency.

The State of Connecticut adopted P.A. 518(1971) (C.G.S. 48-17a,b,c) to comply with the Uniform Land Acquisition Act. It would be anomalous to contend that the State is immune from suit where they have passed specific legislation to comply with the Federal Act. In a case in California, the State raised the issue of sovereign immunity and the defense was rejected by the court:

> It would be a strange situation, indeed, if the state could be held subject to the regulations promulgated of the Uniform Act and liable for a violation thereof, and yet could not be sued without its express consent. The state, by engaging in a grant agreement, and thereby subjecting itself to the act, must be held to have waived any right it may have had arising out of the general rule that a sovereign state may not be sued without its consent. *Maurice v. State*, 43 Cal. App. 2d 275, 277 (1941).

The Uniform Land Acquisition Act applies to the State of Connecticut. The Uniform Act applied to all states not later than July 1, 1972. Section 221 (b) of the Act provides:

> Until July 1, 1972, Sections 210 and 305 shall be applicable to a state only to the extent that such state is able under its own laws to comply with such sections. After July 1, 1972 such sections shall be completely applicable to all states.

The State entered into a grant agreement with the FAA and has given assurances to the FAA of compliance with

Federal Regulations. In point of fact, the State has not complied with Federal Regulations. Under the Uniform Act, the acquiring agency (Connecticut Department of Transportation) was required to have appraisals and to follow the procedures set forth under the Uniform Act to acquire the land.[12] The stipulated judgment was an executory contract whereby the State attempted to purchase land for airport purposes and the Uniform Act applied to the attempted purchase of the land owned by Simmons. The record shows that the State entered into a lease with the FAA for the middle marking system as early at 1974[13] although the State had never acquired any legal interest in the land. Obviously this lease was illegal and fraudulent.

Thus in 1978, at the time of Referee Shapiro's decision, the Uniform Act was applicable to the transaction. It is undisputed that the acquisition of the private property of petitioner was to be completed by the State Agency, Connecticut Department of Transportation, for a federal project with the costs to be shared between the State and the Federal Agency, Federal Aeronautics Administration. Acquisition required a title free and clear of encumbrances or a minimum twenty (20) year lease as enumerated in FAA regulations. (14 C.F.R. § 152.3)

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[12] Excerpts from the Uniform Act are set forth in Appendix E. An examination of the provisions shows that no negotiations can be held prior to an appraisal and there was never an appraisal of the land, thus the State had no authority to enter into negotiations to purchase the land.

[13] A copy of the lease agreement is set forth in Appendix F, App. 46.

The State of Connecticut has not adopted any regulations for the acquisition of land for airport purposes and thus must rely on federal regulations promulgated under the Uniform Act. In *New Haven v. East Haven*, 35 Conn. Supp. at p. 170, the court recognized the applicability of the Uniform Act on the State. Prior to the enactment of the Uniform Act, two separate attempts at condemnation were made by the State of Connecticut and ruled invalid by the Connecticut Supreme Court, *Simmons v. State of Connecticut, supra*. No compensation or damages was paid to petitioner as a result of the aborted condemnations. Rather than attempt a third condemnation act, the State did an end run and ignored both its own laws and the Uniform Act. A state cannot by contract avoid the mandatory requirements of federal legislation and then claim immunity for its unconstitutional action. The Second Circuit has held: "a contract which violates the laws of the United States and contravenes the public policy as expressed in those laws is unenforceable." *Kaiser-Frazer Corp. v. Otis & Co.*, 195 F.2d 844 (1952). The Uniform Act was passed to prevent the very action taken by the State in this case, namely to acquire land for far less than fair market value. If the State can by contract (stipulation) abrogate the Uniform Land Acquisition Act, then the State should be able to enter into contracts to exempt itself from other federal legislation such as the Occupation Safety and Health Administration Act or even social security. Sovereign immunity is not a valid defense to a violation of the Uniform Land Acquisition Act.

"The state is powerless to authorize its agents to take or hold real property unconstitutionally or without statutory authority. State officials cannot therefore shield

themselves with sovereign immunity if a party alleges and proves that they took or retained his real property in a manner which was either unconstitutional or unauthorized by statute." *Simmons v. Parizek,* 158 Conn. 304 (1967). The state clearly took possession of Simmons' property when they leased Parcel C to the FAA in 1974 and continues to hold the property without the payment of compensation and in clear contravention of Federal Law.

The writ should be granted to determine whether a state can avoid the mandates of the Uniform Act by backdating title to the land and whether sovereign immunity is a valid defense to violation of the regulations promulgated by the United States Department of Transportation under the Uniform Land Acquisition Act [Revision 1987-P.L. 100-17]

IV. WHERE THE STATE TAKES THE POSITION IN SUBSEQUENT LITIGATION THAT THE REFEREE'S JUDGMENT IS INVALID, DUE PROCESS OF LAW SHOULD PREVENT THE STATE FROM CLAIMING OWNERSHIP OF LAND BASED ON THE ADMITTEDLY INVALID JUDGMENT.

The State of Connecticut has admitted that Referee Shapiro's judgment is invalid, yet the State continues to claim ownership of petitioner's land based on the invalid judgment. The invalidity of the judgment is readily apparent. First, the only issue before the referee was damages for the prior unsuccessful condemnation attempts by the State of Connecticut. The issue of ownership of the land was not before the court. Second, even if the referee had jurisdiction to transfer land by decree, he had no authority or jurisdiction to backdate the transfer to avoid the effect of State law and the Uniform Land

Acquisition Act. Third, even if the supplemental judgment was within the court's power, the referee, in his supplemental judgment had no authority to expand on the original stipulated judgment and provide the state with the right of first refusal on the sale of land retained by the petitioner and to attach various covenants running with the land. Fourth, the referee could not without violating due process of law extinguish valid liens on the land without service of process on the lienholders. The judgment purports to extinguish several mortgages and judgment liens on the property. None of the lienholders was a party to the action and none of the lienholders have subsequently been served with process or brought into the action. It is clearly a violation of due process of law to take away lienholders rights without them being made a party to the action.

The petitioner, both in state and federal court, has attempted to attack the decision of Referee Shapiro on the grounds of jurisdiction. However, the courts have refused to hear the matter based on sovereign immunity. A void judgment cannot be the basis for depriving petitioner of his land. The writ should be granted and this court should determine whether taking of a petitioner's land and depriving lienholders of their rights violates due process of law. It is a fundamental rule of law that the lack of jurisdiction of a court can be raised at any time, *Karp v. Urban Development Commission*, 162 Conn. 525, 528 (1972); *Carten v. Carten*, 153 Conn. 603, 610 (1966), and cannot be waived by the parties. *Connecticut Steel Co. v. National Amusements, Inc.*, 166 Conn. 255, 262-3 (1974).

Although the issues in this case have been the subject of extensive litigation, no court has reached the central

issue of whether Referee Shapiro had jurisdiction with respect to the subject matter when he issued his decision. On June 7, 1982, in *Simmons v. Wetherall,* Superior No. 163875, a hearing was held on a Motion of two lienholders on the property for payment. The State of Connecticut raised the issue of jurisdiction and took the position that Referee Shapiro did not have jurisdiction to transfer the land in question to the State of Connecticut.[14] The State, in spite of the prior Supreme Court decision, contended that the question of jurisdiction could be raised at any time and admitted that the issue of jurisdiction had not been decided by the Supreme Court. The State was successful in defeating the Motion.

The case before Referee Shapiro was a damage action, *Simmons v. Wetherall,* which had been brought pursuant to a special act of the legislature. It took seven years for the case to reach the point of scheduling a hearing in damages for the State's abortive attempts to condemn the Simmons property. This action was allegedly consolidated with four other cases although a referee does not have authority to consolidate cases.

The parties could have negotiated a sale and withdrawn the actions but the sale would then not be stamped with the approval of the court as a stipulated judgment. In point of fact, the stipulated judgment was nothing more than an "executory" contract for the sale of land. When Simmons refused to complete the sale, the State should have been forced to sue for specific performance

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[14] See Assistant Attorney General Finegold's argument at pages 32-35 of Appendix D.

rather than having title pass as an "execution on a judgment". There is no provision in the Practice Book or in the General statutes of Connecticut that provides for the transfer of land as an execution on a judgment. Yet Referee Shapiro transferred the land on the basis of a Motion for Execution on a judgment.

Even if Referee Shapiro had jurisdiction to transfer the land pursuant to C.G.S. 52-22 as ruled in *Lee v. Tufveson*, 6 Conn. App. 301 (1986), he exceeded his authority. In *Lee* the court relied on the fact that the judge's order transferring the land "did not enlarge or lessen the terms of the stipulated judgment". Additionally the case before the court in *Lee* was a suit for specific performance. If the State had filed an action for specific performance following Simmons' refusal to consummate the sale, then Referee Shapiro would have had the judicial power to transfer the land. He could not, however, backdate the sale as he did in his supplemental judgment.

Even under *Lee*, the court in transferring land pursuant to a stipulated judgment could not expand the terms of the judgment. Referee Shapiro extensively expanded the terms of the stipulated judgment. The supplemental judgment includes an extensive covenant running with the land which impairs the appellant's use of his retained land. This covenant was not part of the original stipulation. The State's right of first refusal set forth in the covenant clearly restricted Simmons' use of the property and constitutes a taking of the property without compensation.

A referee does not have the same judicial power as a judge of the Superior Court. A referee is limited in his power to the matters that are appropriately referred to him. In the instant case, the only issue referred to Referee Shapiro was to conduct a hearing in damages with respect to *Simmons v. Wetherall*. Referee Shapiro was not assigned or empowered to determine ownership of the land and did not even have the power to order the cases consolidated. It is clear that the supplemental judgment issued by Referee Shapiro exceeded his judicial power and is thus void as a matter of law.

It is fundamental that to acquire jurisdiction over the parties, there must be service of process and that without proper service of process, the court never acquires jurisdiction and thus any judgment affecting the rights of parties not served is void as a matter of law. "Jurisdiction is the power of a court to hear and determine the cause of action presented to it. Jurisdiction must exist in three particulars: the subject matter of the case, the parties and the process". *Brown v. Cato,* 147 Conn. 418, 422 (1960). If a court renders a judgment where it does not have jurisdiction, then the judgment is void. *Martin v. Hunters Lessee,* 14 U.S. 304, 364 (1916); *Marshall v. Clark,* 170 Conn. 199, 205 (1976). Since the lienholders were never served with process, the judgment of Referee Shapiro was void and violated the constitutional requirements of due process of law.

Additionally Referee Shapiro ordered payment of taxes on the land from the alleged purchase price even though his order vested title in the State of Connecticut as of 1964. The supplemental judgment was placed on the land records without even being served on the appellant.

Moreover, by backdating the transfer of the land, Referee Shapiro, in essence, overruled prior decisions by the Connecticut Supreme Court in *Simmons v. State of Connecticut*, 160 Conn. 492 (1971) which decision returned all of the land to the appellant. To overrule a prior action of the Supreme Court without the case being reopened is a denial of due process. The fundamental rule of due process is notice and an opportunity to be heard. Appellant's land was taken without due process and lienholders on the property have had their valid liens discharged by the supplemental decision of Referee Shapiro without due process.

The writ should be granted so that this court can reach the ultimate issue of whether due process of law requires that a court have jurisdiction before it can deprive the petitioner of his property.

CONCLUSION

For the reasons set forth above, Petitioner respectfully submits that the Writ should be granted.

Respectfully submitted,

Otto P. Witt
Attorney at Law
11 Mountain Ave.
Bloomfield, Connecticut 06002
(203) 286-8663

APPENDIX

Pages

A. Memorandum of decision is *Simmons v. Parizek*, Case No. 16 29 23, dated January 11, 1977... App. 1

B. Decision in *Simmons v. Wetherall*, 180 Conn. 587 (1980)..... App. 5

C. Memorandum of decision on Motion to Dismiss, *Simmons v. State of Connecticut, et al.*, Case No. 70 0313, dated May 14, 1990.....App. 8

D. Memorandum Decision, 24 Conn. App. 801 dated January 22, 1991..... App. 11

E. Order on Petition for Certification to Appeal, dated February 28, 1991..... App. 12

F. Stipulated Judgment dated January 4, 1978... App. 13

G. Supplemental Judgment dated June 2, 1978... App. 18

H. Transcript for hearing *Simmons v. Wetherall*, June 7, 1982..... App. 32

I. Lease between State of Connecticut Department of Transportation and United States of America.. App. 46

J. Excerpts from Uniform Land Acquisition Act.. App. 52

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P. Connecticut General Statute 48-17, 48-17a, b, c.....App. 69

No. 16 29 23

AUGUSTUS J. SIMMONS	)	SUPERIOR COURT
VS.	)	HARTFORD COUNTY
FRANK C. PARIZEK, ET AL	)	JANUARY 11, 1977

MEMORANDUM OF DECISION

This action in the nature of ejectment was commenced by writ dated October 14, 1969. The plaintiff has alleged that he is the title owner of a 5.97 acre parcel of land in East Granby and that the defendants have excluded him from his use of the land. At the time of the complaint all of the defendants were members of the Aeronautics Commission of the State of Connecticut. By way of relief, the plaintiff seeks a judgment for possession of the premises and monetary damages.

The gravamen of the plaintiff's complaint is that the defendants' unconsented entry upon his land and the erection and continued maintenance of a 6-foot high cyclone fence around it, constituted a taking of the plaintiff's land without statutory authority and also resulted in an uncompensated taking in the constitutional sense in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article First, Sec. 11 of the Connecticut Constitution. He claims that he obtained title by a deed from Anastasia Simmons, which deed is dated November 11, 1964 and by deed from Charles A. Simmons, which deed is dated September 21, 1967; that on or before November 11, 1964, the defendants erected the cyclone fence around his land; that in erecting the fence, entry was had on the plaintiff's

land without his authority; that the defendants have continued to maintain the fence despite repeated demands to remove it; that the defendants have excluded him from all use of said land, depriving him of rents and profits.

Both the plaintiff and the defendants produced appraisers as their expert witnesses. The evidence shows that federal regulations prohibit construction on parcel C, although it is zoned for business, residence and industrial use. Parcel C, so far as airport use is concerned, falls within the approach zone, the clear zone and the approach light zone. I have considered the methods used by the appraisers, the highest and best use and the comparables, and feel that method used by the plaintiff's appraiser, as to fair market value of the land and the fair rental value, is proper, fair and accepted by me. We are concerned with rental value of the land within parcel C covering the years of 1964 through 1969 inclusive. Based on the plaintiff's report (exhibit TTT), I find the fair market rent, together with interest at six per cent, to be as follows:

1964 – current amount due:	$4,312.13
1965 – current amount due:	$4,964.04
1966 – current amount due:	$5,714.60
1967 – current amount due:	$6,541.66
1968 – current amount due:	$7,569.18
1969 – current amount due:	$8,712.03
Total Current Due:	$37,813.64

In addition to the foregoing, the plaintiff seeks an appraisal fee and a sum for his appraiser testifying at the trial. I feel that a fair amount to be allowed the plaintiff for services rendered by his appraiser, including his

appearance in court, is $1,800. The plaintiff also seeks an allowance for his surveyor who appeared in court for two days. I find no authority for such an allowance as there is for an appraiser. However, the map made by Mr. Alford was necessary in the trial of the case.

Judgment may enter as follows: For the plaintiff granting him possession of the land described in the complaint as the title owner thereof. The defendants or their successors shall, within 100 days, vacate the land shown as parcel C on the map entitled "Property of Anastasia Simmons East Side Rainbow Road, East Granby Conn. W. M. Alford Civil Engineer, Scale: 1 in. = 60 ft. Date Oct., 1964" and recorded at Vol. 12 (Map) page 568 of the East Granby Land Records. The defendants, or their successors, within such legal authority as may exist and permit, shall take appropriate steps towards not renewing the lease to the United States relative to the instrument landing lights situated on said parcel C. The defendants or their successors shall pay to the plaintiff the amount of $37,813.64 for rent due through October, 1969, together with an appraiser's fee of $1,800 and a map allowance of $250.

Judgment may enter in accordance with the foregoing, together with such other proper costs to which the plaintiff may be entitled.

Louis Shapiro
State Referee

STATE OF CONNECTICUT)
) ss
Hartford County)

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of of the original memorandum of Decision on file in this office on No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said County, this 17th day of January 1977

/s/ Thomas H. Abraham, CLERK

AUGUSTUS G. SIMMONS *v.* HORACE B. WETHERALL, DEPUTY COMMISSIONER, DEPARTMENT OF TRANSPORTATION, ET AL.

COTTER, C. J., BOGDANSKI, PETERS, HEALEY AND PARSKEY, JS.

Argued April 8 – decision released May 13, 1980

Action to recover damages for the taking of certain parcels of land owned by the plaintiff, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and referred to *Hon. Louis Shapiro*, state referee, who rendered judgment on stipulation, and denied the plaintiff's motion to open the judgment, from which the plaintiff appealed to this court. *No error.*

The appellant filed a motion for reargument which was denied.

Ronald E. Cassidento, with whom, on the brief, was *Donald N. Carlow*, law student intern, for the appellant (plaintiff).

William A. McQueeney, assistant attorney general, with whom, on the brief, was *Carl R. Ajello*, attorney general, for the appellee (defendant state of Connecticut).

PER CURIAM. This appeal stems from various actions, consolidated by the trial referee,[1] involving the plaintiff,

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[1] *Augustus J. Simmons* v. *Horace B. Wetherall, et al.*, No. 163875, was consolidated with the following cases: *State of Connecticut* v. *Augustus J. Simmons*, No. 202121; *Augustus J. Simmons* v. *Samuel Kanell, et al.*, No. 199230; *State of Connecticut* v. *Anastasia Simmons, Augustus J. Simmons* and *Charles Simmons*, No. 140965; and *Augustus J. Simmons* v. *Frank C. Parizek, et al.*, No. 162923.

the state of Connecticut and other litigants concerning the appropriation by the state of certain lands of the plaintiff located in the town of East Granby in the area of Bradley Field.

After extensive litigation over may years, the parties to all of the consolidated cases negotiated a settlement wherein the plaintiff agreed to sell the land to the state for an agreed upon price. After a stipulated judgment had been entered which conformed to the terms of the agreement, the plaintiff moved to open the judgment claiming ineffective assistance of counsel. From the denial of that motion, the plaintiff took this appeal.

On appeal, the plaintiff argues that the court erred in refusing to grant the motion to open the judgment claiming (1) that the state failed to comply with the provisions of § 13b-44 of the General Statutes which require the approval of the town before land can be used for airport expansion, and (2) that there was ineffective representation of counsel resulting from a conflict of interest.

The trial referee's refusal to grant the plaintiff's motion was based on his conclusion that § 13b-44 of the General Statutes was not applicable to the five cases before him. The trial referee also concluded that there was no ineffective representation or conflict of interest on the part of the plaintiff's counsel.

The trial referee's conclusions are tested by the finding; *Brauer v. Freccia,* 159 Conn. 289, 293, 268 A.2d 645 (1970); and the conclusions must stand unless they are inconsistent with the facts found. *Craig v. Dunleavy,* 154 Conn. 100, 105, 221 A.2d 855 (1966).

The trial referee found that § 13b-44 was enacted in 1969, some five years after the disputes which underlie this appeal arose, and that it was not, therefore, applicable to the instant controversy.

The trial referee further found that the plaintiff's complaints directed against his counsel were without merit; that there was no conflict of interest; and that counsel rendered the highest degree of service and devotion to the plaintiff in securing for him an excellent settlement. These unchallenged findings legally and logically support the conclusions reached.

There is no error.

NO. 70 03 13	:	SUPERIOR COURT
AUGUSTUS J. SIMMONS	:	J.D. HARTFORD/ NEW BRITAIN
VS.	:	
STATE OF CONNECTICUT, ET AL	:	AT HARTFORD
	:	MAY 14, 1990

MEMORANDUM OF DECISION
ON
MOTION TO DISMISS

The plaintiff in this matter seeks to relitigate the state's taking of 3 parcels of land located in East Granby, Connecticut by a complaint as amended which alleges an unconstitutional taking of property without compensation. The first three counts of the complaint concern parcels A, B and C previously owned by the plaintiff and the Fourth Count alleges unlawful use of the property acquired by the state as it affects property remaining in the name of the plaintiff.

The relief sought consists of money damages, a judicial determination of title to the property and injunctive relief.

As appears in the brief filed by counsel, the plaintiff has waged an unending effort since 1963 in both the state and federal courts to first contest and later to overturn numerous judicial determinations as affects this property and the present action reflects yet another effort to obtain that result.

As an action brought against the sovereign, there are certain requirements which must be met to allow the further prosecution of this claim.

Consent must be obtained to sue the state absent allegations which allow a plaintiff to fit within certain well prescribed exceptions to this rule. *Owner-Operators Independent Drivers Assn. of America v. State*, 209 Conn. 679, 684. This complaint does not allege that consent has been obtained and accordingly the case must then fit within the exceptions as noted in *Duguay v. Hopkins*, 191 Conn. 222, 227 n.4. While the plaintiff alleges that his property was taken by unconstitutional means in the first three counts, his Memorandum of Law in opposition to defendants Motion to Dismiss dated August 10, 1989 characterizes his action as one in which he seeks to "Quit Title", (Section III p. B). If such be the plaintiffs claim, there is clearly no exception to the doctrine of sovereign immunity for such an action.

However, the plaintiff in numerous paragraphs of his Four Count Complaint alleges an unconstitutional taking of his property without just compensation and these allegations would fit the case into the exceptions set out in *Horton v. Meskill*, 172 Conn. 615, 624, *Simmons v. Parizek*, 158 Conn. 304, 307. From a review of the litigation that has been instituted prior and subsequent to *Simmons v. Wetherall*, 180 Conn. 587, it appears to the court that this action basically seeks to relitigate matters previously decided not only at the trial level but also in rulings by both the Supreme Court and Appellate Court and in the United States District Court for the District of Connecticut. (See defendants Memorandum in support of the Motion to Dismiss dated August 7, 1989 at pages 1, 2, 3, 4, 5 and 6 for the chronology of litigation concerning this property). There must be a finality to litigation and it appears to the court that this complaint is only designed

to yet again contest the validity of the original judgment by Referee Shapiro which has already been determined in *Simmons v. Wetherall,* 180 Conn. 587. The issues raised by the plaintiff bearing on an unconstitutional taking have been previously determined and therefore where the complaint is insufficient to establish an unconstitutional taking, the doctrine of sovereign immunity is a sufficient bar to the jurisdiction of the court. *Horak v. State,* 171 Conn. 257 262.

The Motion to Dismiss is granted.

/s/ Ripley, J.
George W. Ripley

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24 *Conn. App.* 801

AUGUSTUS J. SIMMONS *v.*
STATE OF CONNECTICUT ET AL.
(9213)

SPALLONE, DALY and FOTI Js.

Argued January 7 – decision released January 22, 1991

Action for a temporary order restraining the named defendant et al. from awarding contracts to widen a state highway abutting certain of the plaintiff's real property, and for other relief, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the court, *Ripley, J.*, granted the motion to dismiss filed by the named defendant et al. and rendered judgment dismissing the action, from which the plaintiff appealed to this court. *Affirmed.*

Otto P. Witt, for the appellant (plaintiff).

Arnold K. Shimelman, assistant attorney general, with whom, on the brief, was *Richard Blumenthal*, attorney general, for the appellees (named defendant et al.).

PER CURIAM. The judgment is affirmed.

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-90-121

Augustus J. Simmons

v.

State of Connecticut

ORDER ON PETITION FOR
CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (24 Conn. App. 801), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

Dated: February 28, 1991

Notice to: 2-28-91

Clerk, Superior Court, Hartford
Clerk, Appellate Court
Otto P. Witt
Arnold K. Shimelman, Assistant Attorney General

Otto P. Witt in support of petition; *Arnold K. Shimelman*, Assistant Attorney General, in opposition.

NO. 163875

AUGUSTUS J. SIMMONS of Windsor Locks	:	SUPERIOR COURT
vs.	:	HARTFORD COUNTY
HORACE B. WETHERALL of Wethersfield	:	JANUARY 4, 1978

Deputy Commissioner, Department of Transportation of the State of Connecticut

Donald J. Lynch of New Britain
Director of Bureau of Aeronautics
Department of Transportation of the
State of Connecticut; and
State of Connecticut

Present Hon. Louis Shapiro, State Trial Referee

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the First Tuesday of February, 1970, and thence to December 13, 1977 when this action was consolidated with the following cases:

No. 202121	State of Connecticut vs. Augustus J. Simmons;
No. 140965	State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons vs. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons vs. Frank C. Parizek, et al;

and said cases were referred to the undersigned and thence to the present time, when the parties appeared and stipulated as follows:

1) That any Judgment of this Court in Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside.

2) That any temporary or permanent injunctive relief ordered by the Court in any of the said aforementioned matters be dissolved.

3) That on or about November 12, 1964, Augustus J. Simmons was the owner of three parcels of land located in the Town of Granby, County of Hartford, adjacent to Bradley International Airport known as Parcels A & C on a map entitled "Property of Anastasia Simmons, East Side – Rainbow Road, East Granby, Connecticut Scale: 1 in = 60 feet. Date October 1964, W.M. Alford Civil Engineer, Windsor, Connecticut A.J.S." which map is on file in the Town Clerk's office in said Town of East Granby together with a third piece or parcel of land known as Parcel D located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford, as described on a map entitled "Town of East Granby – Map showing property of Dept. of Transportation of the State of Connecticut – Rainbow Road – Route 20 – Scale: 1 in. = 40 feet. Date January, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Parcel D".

4) That on or about November 12, 1964, the State of Connecticut appropriated Parcels C and D and a portion

of Parcel A and became the lawful owner thereof subject to just compensation due Augustus J. Simmons. The description of said parcels and the portion of Parcel A retained by Augustus J. Simmons is set forth in a Stipulation for Judgment dated January 4, 1978.

5) That fair and just compensation due Augustus J. Simmons from the State for said parcels as of the date hereof, is $385,600 of which the sum of $95,600 is for counsel fees.

6) That all claims in the above-mentioned cases and this action against individual defendants be denied.

7) That a Judgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases.

The Court, having heard the parties finds that on November 12, 1964, Augustus J. Simmons had the record title to said parcels of land, and the State entered thereon, appropriated the same to its own use.

WHEREUPON, it is ORDERED

1) That any Judgment of this Court in Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside;

2) That any temporary and/or permanent injunction ordered by the court in any of the aforementioned consolidated matters be dissolved;

And it is *Adjudged*; that the State of Connecticut became the lawful owner of said parcels on November 12, 1964 subject to fair and compensation due Augustus J. Simmons; that said Augustus J. Simmons recover from the State of Connecticut the sum of $385,600 as fair and just compensation for said parcels, without costs; that Judgment for the individual defendants in all of the consolidated cases be entered without costs; and that the files in the consolidated cases, be and are hereby sealed in their entirety and may not be reopened except on order of the undersigned or the Superior Court.

Execution on this judgment is stayed until April 21 1978 after which time interest shall run at the statutory rate.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

Approved
AUGUSTUS J. SIMMONS

By /s/ O. Ned Rogin
Rogin, Nassau, Caplan, Lassman & Hirtle

State of Connecticut
CARL R. AJELLO
Attorney General

By /s/ Dennis A. Ceneviva
Assistant Attorney General

Received June 2, 1978
at 11:49 A.M.

By /s/ Marilyn L. Barstow
Asst. Town Clerk.

NO. 163875		
AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
V.	:	
HORACE B. WETHERELL, ET AL	:	HARTFORD COUNTY
	:	JUNE 2, 1978

Present: Hon. Louis Shapiro, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons v. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Parizek et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a stipulation for judgment and judgment dated January 4,

1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligations in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$20,000
55/690	A	Jerome H. Diamond	Mod. of Mtg.	6/20/74	–
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$5,100
55/731	A	Thomas P. Byrne	Mtg.	7/8/74	$4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$962.97
57/426	ABC	Htfd. Nat'l Bank	Attach.	6/21/76	$2,625.00
58/95	C	Leonard Allaire, et al	Judg.	3/15/77	$11,104.00
58/221	C	Patsy Valente, et al	Attach.	4/28/77	$3,000.00

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
58/301	A	Angelo Roncari	Lse.	5/24/77	-
59/253	C	Patsy Valente, et al	J/L	3/7/78	$2,490.00
59/263	C	Patsy Valente, et al	L/P	3/13/78	$3,000.00
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/283	Portion of Parcel A	Westside Vallet Parking, Inc.	Lse.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29 from the sum deposition.

4) That pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Pasty Valente, Westside Vallet Parking, Inc., David B. Salzman, and

Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part there-of, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF
TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney –
85340
AAG-TRANS-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forty-Six One-Hundredths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Four One-Hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, Fifth-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road – Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer – Bureau of Highways January, 1978",

which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet, more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing

Property of Dept. of Transportation of The State of Connecticut Rainbow Road – Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer – Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby – Map showing property of Augustus J. Simmons – Rainbow Road – Route 20 – Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons covenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successor in title, or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Right of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the

"Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters,

and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
) ss
Hartford County)

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

SEAL

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court.

SUPERIOR COURT JUDICIAL DISTRICT OF
HARTFORD/NEW BRITAIN AT HARTFORD

- -X

AUGUSTUS J. SIMMONS,	:	NO. 163875
Plaintiff,	:	June 7, 1982
vs.	:	
HORACE B. WETHERALL,	:	
Defendant.	:	

- -X

Before:

The Honorable ANTOINETTE L. DUPONT, Judge

Appearances:

For the Plaintiff:
AUGUSTUS J. SIMMONS, Pro Se

For Allair and Valenti:
WALTER E. BASS, JR., ESQ.

VICTOR FEINGOLD, ESQ.
Assistant Attorney General

Harold J. Moan, Sr.
Court Reporter

* * *

[p. 12] MR. BASS: Thank you.

THE COURT: Mr. Feingold.

MR. FEINGOLD: Your Honor, I am Victor Feingold, Assistant Attorney General. I have appeared before your Honor on other motions, and in the past I have resisted any further order of the Court which would

direct the payment of any monies now in the custody of the Court. I again object to any order of the court which would direct the clerk to disburse any of the funds now on deposit in the Court. My reasons for the taking of this position are now being set forth by me today before your Honor. I am now going to introduce a new element, which might affect the decision of your Honor, and that is the jurisdiction of your Honor to act on the motion of Mr. Allair and Mr. Valenti, who are seeking each independently an order for disbursements of funds.

Now, the first point I want to make is that the basis for the deposit itself is found in a practice or procedure new to this state and not known to our practice. The office of the Attorney General was confused with how to effect compliance with this stipulated judgment. The Supreme Court of the State of Connecticut in Simmons against Wetherall, and in that case the spelling in the recorded opinion was [p. 13] W-e-t-h-e-r-e-l-l, which is a mistake. Well, it arises out of the case of Simmons against Wetherall, which your Honor recited at the opening of this hearing.

In the Supreme Court opinion, at 180 Conn. 587, the case of Simmons against Wetherall, as reported by the opinion, referred to an appeal by the plaintiff, Augustus J. Simmons, from the denial of a motion to open a judgment. The judgment was recited in the opinion of the Supreme Court as a judgment on stipulation. At page 588 of 180 Conn., the Supreme Court commented on the nature of the case and some of the background, and indicated after extensive litigation, all cases were consolidated. The Supreme Court referred, particularly to a number of pending state cases and the examination of the

records and briefs of the Supreme Court opinion will also show that there was pending some federal cases in the United States District Court for the District of Connecticut. The Supreme Court then stated that the parties negotiated a settlement of all cases. I now quote, wherein the plaintiff agreed to sell the land to the State for an agreed-upon price. Our reading of the stipulation and the judgment which purportedly conformed to the stipulation, does result in an uncareful analysis to a simple agreement to sell land for a price certain. Now, thereafter, no action was brought to even enforce [p. 14] this agreement. If the stipulated judgment is viewed, as I claim it must, as an executory contract for the sale of real estate, the statute of limitations have passed and the State of Connecticut is barred from enforcing the agreement by specific performance. Well, I believe the statute is 47-33A. When I discovered in my view that specific performance of an agreement to sell real estate is unenforceable, then all proceedings in accordance with the order of judge Shapiro regarding the removal of encumbrances that followed this stipulated judgment, are null and void and cannot properly be even considered. The State can never obtain voluntarily a deed from Mr. Simmons which was contemplated by the parties. The State was ready, able and willing, as the record will show, to pay the agreed-upon price. Mr. Simmons has resisted furnishing the State with an executed deed. Furthermore, Mr. Simmons has made every effort to resist the proceedings in the State court which gives rise to the stipulated judgment. Well, the stipulation and the agreement by bringing an action in the United States District Court attacking the validity of the State court judge.

Now, I have previously furnished to your Honor, a certified copy of the complaint from Mr. Simmons pending in the United States District Court. This [p. 15] morning Attorney Bass is present on his motion, and I do not know if he has actual or constructive knowledge of the fact that there is pending in the United States District Court, a very important civil action, in part a civil rights action, which if tried to conclusion could very well result in a judgment for Mr. Simmons that the State court proceedings violated his rights. I am speaking of the State court proceedings that led to the judgment on stipulation. Now, using that as a piece of evidence, I cannot, in good conscience, ever or anticipate that Mr. Simmons would ever deliver to the State a deed of the specific land within the stipulation for the agreed-upon price. If he will not deliver the deed, and there is no deed of Mr. Simmons in the custody of the court for delivery to the State, as there is money on deposit, then I cannot see why the State funds should be used to start paying his obligation and his bills, because that is all this thing amounts to. Well, to use this money to pay his bills where Mr. Simmons, himself, resisted it, quid pro quo, and has no intentions of ever delivering a deed to the State for the agreed-upon price.

Now, since this judgment on stipulation is defined by me, and I believe as a matter of law must be defined as an executory agreement for the sale of the [p. 16] land on an agreed-upon price, and unenforceable because of the statute of limitations, the Superior Court cannot entertain an action or specific performance on behalf of the State. Well, the entire matter must be left for further proceedings in an effort to adjust the differences of the parties.

The action for the judgment on stipulation cannot be characterized as an equitable claim. It is in no way a condemnation matter brought under any procedures of the State of Connecticut to condemn land for airport purposes or any other purposes.

THE COURT: Excuse me.

(There was a discussion off the record.)

MR. FEINGOLD: I was arguing now that in no way any of the proceedings that gave rise – none of the proceedings following the judgment on stipulation were undertaken in accordance with any of the provisions of 48-11. Now, 48-11 is a statute specifically applicable to proceedings in imminent domain, whether it is by state agency or the State of Connecticut or any municipality or any condemnor who has the power of imminent domain. So, 48-11, which gives the Court jurisdiction of monies on deposit, and also upon application to disbursement of funds on a hearing, in no way applies to any of the proceedings in the case of Simmons against Wetherall and related cases. It is true [p. 17] that some of the consolidated cases did involve efforts, by the State to exercise imminent domain powers for purposes of acquisition of land of Mr. Simmons' for airport purposes. Those efforts were aborted and failed as prior decisions of the Supreme Court will show. So, the funds that are now on deposit do not relate to those earlier cases. In fact, any funds that were on deposit in those cases have since been either paid out or returned to the State treasury. So, as a point of law in this matter, Mr. Bass in no way as he claims to seek disbursements of funds, relied on 48-11.

Now, I am going to the question of another matter that Judge Shapiro seems to assume that he had the power to exercise authority when he entertained a motion of Assistant Attorney General McQueeney for execution of the judgment.

I now direct your Honor, and invite your Honor's attention to another element of jurisdiction in the entire matter of Simmons against Wetherall. I might say that whenever I call your Honor's attention to the question of jurisdiction, in accordance with the law of the State, if lack of jurisdiction is brought to your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, your Honor cannot proceed on any of the proceedings until you [p. 18] resolve the issue of subject matter jurisdiction. If per chance the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this court, the question of jurisdiction is called to your Honor's attention. The second point on lack of jurisdiction that I call your Honor's attention to, is that when Assistant Attorney General McQueeney came in with a motion for execution of an unsatisfied judgment, a concern of the State Referee, Judge Shapiro, was how to execute it. The judgment was not for money damages. As I recited before, the judgment on stipulation –

MR. SIMMONS: What was that? Would you please repeat that?

MR. FEINGOLD: The judgment was not for the payment of money damages insofar as the State was

concerned. It was in favor of Mr. Simmons for the payment of an agreed-upon price for the sale of land. I do not believe that this judgment resulted in the payment of money damages. Consequently, Mr. Simmons could not get execution against the State nor could the State get execution in the normal way that executions are given under the statute for judgment. So, Jusge Shapiro heard [p. 19] the stalemate that arose here, and Mr. Simmons stated he was ready, willing and able and agreed to pay the agreed-upon price and refusing to execute and deliver a deed to the State. So, the Honorable Louis Shapiro, State Referee, acting under whatever he believed his statutory powers were as a State Referee, with all the powers of a judge of the Superior Court, undertakes to declare by court order, that title to the land is automatically vested in the State of Connecticut in accordance with the judgment. I refer your Honor to paragraph one of an order of Judge Shapiro, that is found in the case that your Honor recited by docket number in the Superior Court, Simmons versus Wetherall and also found on page 37 of the Supreme Court records and briefs relating to 180 Conn. at 587. Paragraph one of what purports to be an order of Judge Shapiro contained in four numbered paragraphs recite prior – paragraph one there is a recitation of a number of matters apparently furnished Judge Shapiro from the Land Records in East Granby under the name of Augustus J. Simmons. Now, included in the list of matters was the mortgage and agreement of Mr. Diamond, a mortgage of Thomas P. Byrne, a lis pendence of Leonidas Simmons, a judgment of CBT, an attachment of Hartford National Bank, a judgment of the applicant today, Leonard Allair, [p. 20] Et Al, an attachment of what

purports to be an application of the applicant today, Valenti, a lease to Angelo Roncari and judgment, lien registration of the applicant today, Patsy Valenti, Et Al, and a lis pendence of Patsy Valenti, Et Al, another lis pendence of Leonard Allair, Et Al. Well, in addition, a lease seemingly recorded on March 16, 1978 to Westfield Vallet Parking, Incorporated, and an attachment of David B. Salzman. It appears that in view of all of these matters called to Judge Shapiro's attention, what the state of the title was, Judge Shapiro, undertook without any motions before him, and without any proceedings, to enter an order other than the appearance of Mr. Simmons and the State, directing that all encumbrances be removed and that title to the premises described in Exhibit A attached hereto, together with convenance described in Exhibit B attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

In no way do I understand that the terms of the judgment on stipulation empower any court to summarily invest title in the State of Connecticut. I take the position that Judge Shapiro had no statutory or any other authority, either as a State Referee, Judge [p. 21] of the Superior Court or acting as a Judge of the Superior Court, to pass title in this case to the State of Connecticut. It would appear that Judge Shapiro believed he had that power, and in doing so believed that he could now execute in his fashion as a judge, that he had previously entered in accordance with the stipulation. There is nothing in the terms of the stipulation, as I read it, that even obligated Mr. Simmons to execute a deed. Therefore, I come back to what I mentioned before. It is simply an

executory agreement for the sale of real estate. Imperfect as it is, and maybe it didn't really accomplish what the parties intended it to do, it now has developed an unenforceable thing in my view. It may very well be that all of the cases that were supposed to have been consolidated and settled in the Superior Court, are not truly settled, and that all cases go back to the status quo they were in including the United States District Court pending cases that Mr. Simmons still will have to litigate in the Supreme Court, his title to the Bradley Field. He still will have to litigate his claim for money damages that was given to him by the Special Act of this Legislature where various defenses have been asserted. We are back with Mr. Simmons battling now in the Superior Court. Well, that is the turn of the screw on this type [p. 22] of case, because I cannot see the way the proceedings have gone at this stage that this judgment can properly be enforced by either party.

Now, another matter was the fact paragraph two, where Judge Shapiro directed the State pay to the clerk these funds. Now, this is a burden on the clerk and that is nowhere statutory and no proceedings to my knowledge that can place a burden on the clerk of the Superior Court to take money under an executory agreement for the sale of land, even if the State was one of the parties to the agreement. There is no jurisdiction for him to even hold this. As far as item three, that Mr. Simmons vigorously resisted, it was an order that the clerk pay to the tax collector of Granby. Well, paragraph three, and quoting, that the clerk of said court pay to the tax collector for the Town of East Granby the sum of $8,761.29 together with accrued interest, lien in releases from the sum deposited.

This order was without due process and there was no notification to the tax collector or the clerk, and there was no notification to Mr. Simmons that such an order would be entered. There was no opportunity for the parties to appear in open court and agree or to present evidence on the nature of this order. The validity of this proceeding thereafter were had in accordance [p. 23] with this order that Mr. Simmons vigorously opposed and Judge Corrigan ruled he must follow the directions of the Superior Court acting through Judge Shapiro.

I submit again, as I believe I did to Judge Corrigan, that if Judge Shapiro had no jurisdiction of the subject matter in the first instance, then his order directing the clerk to release monies and to pay what purportedly was tax bills against the list in the name of Mr. Simmons, that it was illegal, null and void, and Mr. Simmons could very well be right in that the payment of that money was not justified.

Coming to paragraph four –

THE COURT: I believe you have made these before, Mr. Feingold. I wonder if you could maybe address yourself to your objection to this motion or these two motions, which are for disbursements.

MR. FEINGOLD: Yes. Coming to that last one, the order that would bring anybody into this court, if these orders had any validity, was found in paragraph four of Judge Shapiro's order, where he stated that pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein, be and are cited to appear before the Court with proof of the

amount and validity of their [p. 24] liens or encumbrances, that the clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

Now, while the citation that was issued by the Assistant Attorney General was made and was supposed to have been certified by a deputy sheriff, and Mr. Simmons was not even named as a party in that proceeding, the citation itself does not have any of the allegations necessary to invoke the jurisdiction of this Court under Section 52-44, which is an action to acquire title, nor does that citation have any of the elements necessary to invoke the jurisdiction of this Court under Section 47-31, which is an action of interpleader, and none of the parties apparently have been served, according to the sheriff's return. Well, upon examination of the citation, which is now on file in the Superior Court, and somewhere in this Simmons against Wetherall, Superior Court case, without having its own docket number, have never been defaulted out and their priorities and their equities have never been determined. This simple effort by a motion of both of these named creditors to seek a disbursement of funds, it doesn't follow any of the requirements for an action, title or interpleader, it [p. 25] must fail. It doesn't address itself properly to enable the Court to even determine the amount and validity of the claim. In addition, the proof would be required more than a motion practice and at least, there should have been testimony, if not the parties, then a certified copy of the land records indicating indeed that a judgment lien exists on the land records, which is entitled to a priority and also testimony regarding what

aspects or what amount of the judgment lien, if any, has been satisfied should be required. In addition, the question of whether interest accrues on the judgment lien and also it has to be claimed and made certain, because the Legislature in enacting the statute on execution on judgment altered the rate of interest, which previous to October 1, 1979 was six percent, and effective October 1, 1979, it became eight percent. If statutory interest is due on the judgment lien, that must be made known. Well, whether the judgment is based on notes or a higher rate of interest, that survives the judgment, and to be paid until it is fully satisfied, we have no way of knowing. Since there is no proof at all of the amount and validity of the claim, without even testimony or certified copies of records, I do not see how you can proceed, even if your Honor should overrule the prior claims that I have made. That is all.

[p. 26] THE COURT: Thank you.

MR. BASS: A very short rebuttal, your Honor.

First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the Court to hear this case. Secondly, your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issues so that all people would come forth and present their claims. I have a right to inform the Court that in the citation, my two clients were listed under the care of my office. I will state to the Court that I have never been served any citation nor has my client ever been served with any kind of citation to give us any notice to come in to determine what our priorities are in

this matter. Secondly, perhaps Section 48-11 is not applicable. I would request that the Court – excuse me. I will withdraw that.

The reason why we may reference to this statute, because it is the only way that the clerk's office could handle disbursements and through their advice on how to try to present a motion for disbursement of these monies, and that is why we made reference to it. My feeling is that this case is a very old case [p. 27] and it has seen many, many motions and actions. There seems to be a substantial problem with the State's end of this case. Now, whether the problems are due to Mr. Simmons or the State, I don't know, your Honor. I have two people that are looking for money that are entitled to money, and there are funds available. I would ask your Honor to weigh all the equities. The Court has a responsibility to all the people and not just the State. If the State has gone over any statute of limitation for any action they may have, that is not a concern of this Court. If the Court has jurisdiction and if all parties submit themselves to the jurisdiction of the Court, I do not feel jurisdiction is a problem at this time.

I would like the Court to realize my clients as well as myself, pursuant to whatever paragraph it was in Judge Shapiro's decision, that Mr. Feingold referred, were never cited and never served. We had no knowledge of this.

THE COURT: I think I have enough understanding of it. Did you want to say something further?

MR. SIMMONS: I should cap it off, I think your Honor. I find myself in a very difficult position to follow

Mr. Feingold's remarks, because he was vacilating all the way from left field to center

* * *

CERTIFICATE

STATE OF CONNECTICUT	:	SUPERIOR
CASE NO. 163875	:	COURT
	:	JUDICIAL
AUGUSTUS SIMMONS	:	DISTRICT AT
VS.	:	HARTFORD,
	:	CONNECTICUT
HORACE WETHERALL	:	JUNE 7, 1982

I hereby certify that the within and foregoing (33) pages constitute a true, complete and accurate transcript of the proceedings in the above-entitled matter, heard before Hon. Antoinette L. Dupont, Judge in the Superior Court, Judicial District of Hartford, at Hartford, Connecticut, on June 7, 1982.

Dated at Hartford, Connecticut, this 18th day of April, 1984.

/s/ Harold J. Moan, Sr.
Harold J. Moan, Sr.
Certified Court Reporter

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NEW ENGLAND REGION
12 NEW ENGLAND EXECUTIVE PARK
BURLINGTON, MA 01803

Lease No.: DOT-FA74NE-0369
BRADLEY INTERNATIONAL
ILS-ALS R/W6

LEASE

between
STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

and

THE UNITED STATES OF AMERICA

This LEASE, made and entered into this first day of June in the year one thousand nine hundred and seventy four by and between the State of Connecticut, Department of Transportation whose address is 24 Wolcott Hill, Wethersfield, Connecticut, 06109 for itself and its heirs, executors, administrators, successors, and assigns, hereinafter called the lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. For the term beginning June 1, 1974 and ending June 30, 1974, the lessor hereby leases to the Government the following described property, hereinafter called the premises, viz:

As contained in Exhibit I attached hereto and made a part hereof.

* * *

9. The Lessor grants to the Government the right to utilize any existing power lines, control lines, conduits, or other facilities of the Lessor which are adaptable to use in connection with the purpose of this covenant.

10. The Lessor hereby warrants that it has aquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the Government the rights and interests set forth herein.

11. The right of ingress and egress and the right of way herein granted shall insure to the benefits of the Government and its duly authorized agents, representative, contractors and employees.

12. The Lessor agrees not to erect or to allow to be erected on the property leased hereby or on adjacent property of the Lessor, any structure or obstruction of whatsoever kind of nature as will interefere with the proper operation of the facilities to be installed by the Government under the terms of this Lease unless consent thereto shall first be secured from the Government in writing. Further, in order to insure the continuing proper operation of the ALS Facility, the Lessor shall prevent the erection of any structure, or the natural growth of trees, brush that will cause that structure or natural growth to:

(a) protrude an area hereinafter referred to as the light plane. For obstruction clearance purposes this light plane is defined as rectangular in shape, 400 feet wide and symmetrically located about the ALS centerline; it shall start at the landing threshold and extend 200 feet beyond the approach end of the system.

(b) prevent a clear line of sight to all lights of the system from any point on a surface, one-half degree below the glide path and extending 250 feet each side of the centerline, up to 1600 feet in advance of the outermost light in the system.

13. In order to insure the continuing proper operation of the Instrument Landing System(s), the Lessor agrees that certain critical and no-parking areas, which are shown on the attached Drawing No. 1-A-3076, shall be established in the vicinity of the localizer and glide slope facilities.

Where the critical areas lie within the bounds of the Airport, the Lessor agrees not to erect or allow to be erected any structure of any kind or nature nor to perform or allow to be performed any excavating, grading or planting operations within these areas, without the prior concurrence of the Government. Where the critical areas lie outside the bounds of the Airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved covering these restrictions.

In the event of natural erosion, the Lessor agrees to perform corrective grading, planting and excavation within the critical area. Such work shall be accomplished during a period which is mutually agreeable to both Lessor and Lessee.

Where the critical and no-parking areas lie within the bounds of the Airport, the Lessor agrees not to permit the presence of parked aircraft, vehicles or equipment within the critical and no-parking areas, or of free moving aircraft or vehicles within the critical areas which are not under the control of tower personnel when the facilities

are in operation. The Lessor agrees to provide and maintain no-parking signs within these areas, when required.

Where the critical and no-parking areas lie outside the bounds of the Airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved granting the Lessor the right to establish and maintain no-parking signs on their properties within these areas.

The Lessor further agrees to provide and maintain markings as required, on all paved areas to delineate the limits of the critical area.

14. The Government waives the requirement for radio control of traffic in the vicinity of Runway 6 Localizer on the North Perimeter Road.

15. For and in consideration of the benefit to the Bradley International Airport and the general public using same, the Lessor agrees to and grants to the Government all terms and conditions stated herein at no cost.

16. This lease will supersede License DOT-FA73NE-0308 on commissioning of the CAT-II ILS system.

17. The Lessor further agrees that in the event that relocation or modification of the FAA's facilities associated with air navigation or components thereof hereinbefore described is made necessary by airport improvements or changes made or caused to be made by the airport owner (the term "airport owner" used herein refers to the political subdivision or other competent authority responsible for the airport operation and capital

improvements), the costs of such relocation or modification shall be chargeable to the Lessor; that the Government shall have the exclusive right to determine how the relocation or modification project shall be accomplished including, but not limited to, the engineering, site selection, procurement of equipment; construction, installation, testing, flight inspection and recommissioning of the facility; that upon submission by the Government of an estimate of the relocation or modification costs, the Lessor shall transfer to the Government the funds required for the relocation or modification; that in the event the actual costs of relocation or modification exceed the estimate submitted by the Government the Lessor shall pay only the actual costs; that the Government shall have the exclusive right to determine when a relocation or modification of a facility or component thereof has been made necessary by airport improvements or changes made or caused to be made by the airport owner, and that this decision shall be final. It is agreed by and between the Lessor and the Government that in the event the actual costs of relocation or modification of a facility or component thereof is less than the estimate submitted by the Government the Lessor shall pay only the actual costs.

18. The following changes were made to this Lease prior to execution:

a. Deletion of certain wording in paragraph 2.

b. Deletion of paragraph 3 in its entirety.

c. Addition of certain wording in paragraph 7.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date indicated.

WITNESSES

/s/ Sandra L. Barone

/s/ Madeline P. Makiaria

/s/ George J. Bates

/s/ Susan R. Pitt

STATE OF CONNECTICUT
DEPARTMENT OF
TRANSPORTATION

By /s/ Joseph B. Burns (Seal)
Joseph B. Burns
Commissioner

Date: June 11, 1974

UNITED STATE OF
AMERICA
DEPARTMENT OF
TRANSPORTATION

By /s/ Roland O. Bisson Jr
(Seal)
Date: May 24, 1974

This Agreement is made with the approval of the undersigned, under the provisions of Section 13b-42(b) of the General Statutes of Connecticut, as revised.

/s/ C. Pierre Phillips
Deputy Attorney
General
State of Connecticut

Date: JUL 26 1974

/s/ Gerald J. Nelson
Deputy Commissioner
of Finance and Control
State of Connecticut

Date: 6/25/74

§ 4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other

than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 258a of Title 40, for the benefit of the owner, an amount no less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or deter negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this subchapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid there for to a Federal agency, as such person shall determine.

(As amended Pub.L. 100-17, Title IV, § 416, Apr. 2, 1987, 100 Stat. 255.)

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§ 4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases

(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receive satisfactory assurances from such acquiring agency that –

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

(b) For purposes of this section, the term "acquiring agency" means –

(1) a State agency (as defined in section 4601(3) of this title) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

EXCERPTS FROM REGULATIONS PROMULGATED FOR UNIFORM LAND ACQUISITION ACT

Subpart B – Real Property Acquisition

§ 25.101 Applicability of acquisition requirements

(a) *General.* The requirements of this Subpart apply to any agency acquisition of real property for a Federal or federally assisted project, except for voluntary transactions. (See Appendix A)

. . .

§ 25.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations.

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representatives shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment of offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Promptly

thereafter the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

. . .

(h) *Coercive action.* The agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

. . .

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall (1) pay the agreed purchase price to the owner, or (2) in the case of a condemnation, deposit with the court for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceedings for the property . . .

. . .

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by the exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

Sec. 47-31. Action to settle title or claim interest in real or personal property. (a) An action may be brought by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the property, or any part of it, or to have any estate in it, either in fee, for years, for life or in reversion or remainder, or to have any interest in the property, or any lien or encumbrance on it, adverse to the plaintiff, or against any person in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the property. Such action may be brought whether or not the plaintiff is entitled to the immediate or exclusive possession of the property.

(b) The complaint in such action shall describe the property in question and state the plaintiff's claim, interest or title and the manner in which the plaintiff acquired the claim, interest or title and shall name the person or persons who may claim the adverse estate or interest. In any such action the plaintiff may join as defendants any unknown person or persons who claim or may claim any rights, title, estate or interest in or lien or encumbrance on the property described in the complaint, adverse to that of the plaintiff, whether the claim or possible claim be vested or contingent. If in the complaint, the plaintiff alleges that there are or that there may be persons who have or may have some right, title, estate or interest in or lien or encumbrance on the real or personal property but the persons cannot be located or are unknown to the plaintiff, or both, and describes the actual or possible

estate or interest of such person or persons, and how derived, so far as may be known to him from a reasonable search of the available land records or otherwise, he may join as defendants all unknown persons who may have made any such claim by stating in the summons, after setting forth the names of known claimants, the words, "and all unknown persons, claiming or who may claim any rights, title, interest or estate in or lien or encumbrance upon the real property described in this complaint, adverse to the plaintiff, whether such claim or possible claim be vested or contingent," and it shall not be necessary to set forth therein any further description of the unknown person or persons. If, there are no known claimants, or possible claimants, to the property described in the complaint, the action shall be deemed to be maintained against all unknown persons claiming or who may claim any rights, title, estate, or interest, or lien or encumbrance upon the real or personal property described in the complaint, adverse to that of the plaintiff, whether the claim be vested or contingent, and the action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants designated as party defendants.

(c) If the plaintiff or his attorney annexes to the complaint in any such action an affidavit setting forth such facts and in addition sets forth the efforts which were made to ascertain the names and addresses as well as the interest or estates of the unknown persons, the court to which the action is brought or a judge thereof may make such order relative to the notice which shall be

given in such cause as the court or judge deems reasonable. That notice having been given according to the order and duly proven shall be sufficient to confer jurisdiction of all such unknown persons and the court may proceed to a hearing of the cause at any time that it deems proper. The court shall not be required to appoint any guardian or other person to represent such unknown persons under any legal disabilities and all such persons shall be concluded by any decree or judgment in respect to the real or personal property involved in the action.

(d) Each defendant shall, in his answer, state whether or not he claims any estate or interest in, or encumbrance on, the property, or any part of it, and, if so, the nature and extent of the estate, interest or encumbrance which he claims, and he shall set out the manner in which the estate, interest or encumbrance is claimed to be derived.

(e) No judgment for costs shall be rendered in such action against any defendant, who, by his answer, disclaims all estate or interest in or encumbrance on such property, but costs shall be taxed in his favor at the discretion of the court; and the court shall, in any such case, without further proof, render judgment that such defendant has no estate, interest in or encumbrance on such property or any part of it.

(f) The court shall hear the several claims and determine the rights of the parties, whether derived from deeds, wills or other instruments or sources of title, and may determine the construction of the same, and render judgment determining the questions and disputes and quieting and settling the title to the property.

Sec. 8-129. Agency to determine compensation and file with superior court and town clerks; notice to owners and interested parties. Possession of land. Certificate of taking. The redevelopment agency shall determine the compensation to be paid to the persons entitled thereto for such real property and shall file a statement of compensation, containing a description of the property to be taken and the names of all persons having a record interest therein and setting forth the amount of such compensation, and a deposit as provided in section 8-130, with the clerk of the superior court for the judicial district in which the property affected is located. Upon filing such statement of compensation and deposit, the redevelopment agency shall forthwith cause to be recorded, in the office of the town clerk of each town in which the property is located, a copy of such statement of compensation, such recording to have the same effect as and to be treated the same as the recording of a lis pendens, and shall forthwith give notice, as hereinafter provided, to each person appearing of record as an owner of property affected thereby and to each person appearing of record as a holder of any mortgage, lien, assessment or other encumbrance on such property or interest therein (a), in the case of any such person found to be residing within this state, by causing a copy of such notice, with a copy of such statement of compensation, to be served upon each such person by a sheriff, his deputy or a constable or an indifferent person, in the manner set forth in section 52-57 for the serve of civil process and (b), in the case of any such person who is a nonresident of this state at the time of the filing of such statement of compensation and deposit or of any such person whose

whereabouts or existence is unknown, by mailing to each such person a copy of such notice and of such statement of compensation, by registered or certified mail, directed to his last-known address, and by publishing such notice and such statement of compensation at least twice in a newspaper published in the judicial district and having daily or weekly circulation in the town in which such property is located. Any such published notice shall state that it is notice to the widow or widower, heirs, representatives and creditors of the person holding such record interest, if such person is dead. If, after a reasonably diligent search, no last-known address can be found for any interested party, an affidavit stating such fact, and reciting the steps taken to locate such address, shall be filed with the clerk of the superior court and accepted in lieu of mailing to the last-known address. Not less than twelve days nor more than ninety days after such notice and such statement of compensation have been so served or so mailed and first published, the redevelopment agency shall file with the clerk of the superior court a return of notice setting forth the notice given and, upon receipt of such return of notice, such clerk shall, without any delay or continuance of any kind, issue a certificate of taking setting forth the fact of such taking, a description of all the property so taken and the names of the owners and of all other persons having a record interest therein. The redevelopment agency shall cause such certificate of taking to be recorded in the office of the town clerk of each town in which such property is located. Upon the recording of such certificate, title to such property in fee simple shall vest in the municipality, and the

right to just compensation shall vest in the persons entitled thereto. At any time after such certificate of taking has been so recorded, the redevelopment agency may repair, operate or insure such property and enter upon such property, and take whatever action is proposed with regard to such property by the project area redevelopment plan. The notice referred to above shall state (a) that not less than twelve days nor more than ninety days after service or mailing and first publication thereof, the redevelopment agency shall file, with the clerk of the superior court of the judicial district in which such property is located, a return setting forth the notice given, (b) that upon receipt of such return such clerk shall issue a certificate for recording in the office of the town clerk of each town in which such property is located, (c) that upon the recording of such certificate, title to such property shall vest in the municipality, the right to just compensation shall vest in the persons entitled thereto and the redevelopment agency may repair, operate or insure such property and enter upon such property and take whatever action may by proposed with regard thereto by the project area redevelopment plan and (d) that such notice shall bind the widow or widower, heirs, representatives and creditors of each person named therein who then or thereafter may be dead. When any redevelopment agency acting in behalf of any municipality has acquired or rented real property by purchase, lease, exchange or gift in accordance with the provisions of this section, or in exercising its right of eminent domain has filed a statement of compensation and deposit with the clerk of the superior court and has caused a certificate of taking to be recorded in the office of the town clerk of each town

in which such property is located as herein provided, any judge of such court may, upon application and proof of such acquisition or rental or such filing and deposit and such recording, order such clerk to issue an execution commanding the sheriff of the county or his deputy to put such municipality and the redevelopment agency, as its agent, into peaceable possession of the property so acquired, rented or condemned. The provisions of this section shall not be limited in any way by the provisions of chapter 832.

(1955, S. 489d; November, 1955, S N32; 1957, P.A. 270, S I; 1959, P.A. 397, S. 3; 1961, P.A. 231, S. I; 1969, P.A. 226, S. I; P.A. 78-280, S. 15, 127.)

Sec. 13b-50. Cooperation with federal government. State assistance to municipalities and owners of commercial airports. (a) The commissioner is authorized to cooperate with the government of the United States or any agency or department thereof in the acquisition, construction, improvement, maintenance and operation of airports, heliports, landing fields and other aeronautical facilities in this state where federal financial aid is received and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports, heliports and facilities. The commissioner is authorized to accept, receive and receipt for federal or other moneys for and in behalf of this state or any political subdivision thereof for the acquisition, construction, improvement, maintenance and operation of facilities within this state. All moneys accepted for disbursement by the commissioner pursuant to this subsection shall be deposited in the state treasury and disbursed in accordance with the provisions of the respective grants.

(b) Any municipality is authorized to accept, receive and receipt for federal moneys and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports and other air navigation facilities and sites therefor and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and facilities. No municipality shall submit to the administrator of civil aeronautics of the United States any project application under the

provisions of Section 9(a) of Public Law 377, 79th Congress, or any amendment thereof, unless the project and the project application have been approved by the commissioner.

(c) Any municipality is authorized to designate by ordinance the commissioner as its agent to accept, receive and receipt for federal moneys in its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance equipment or operation of such airports or other air navigation facilities, and may enter into an agreement with the commissioner prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. Such moneys are paid by the United States government shall be paid to such municipality under such terms and conditions as may be imposed by the United States in making such grant.

(d) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by the municipality itself or through the commissioner, shall be made pursuant to the laws of this state governing the making of like contracts; provided, where such acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal moneys, the municipality, or the commissioner as it agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(e) The commissioner may render financial assistance by grant of funds to any municipality or municipalities acting jointly in the planning, acquisition, construction or improvement of an airport owned or controlled, or to be owned or controlled, by such municipality or municipalities, out of appropriations made by the general assembly for such purposes. Such financial assistant may be furnished in connection with federal or other financial aid for the same purposes for not more than seventy-five per cent of the cost exclusive of federal aid. The commissioner may, by regulation, establish procedure to be followed in granting funds under this subsection and may prescribe forms to be used in connection therewith.

(f) The commissioner may, whenever he considers such assistance desirable or feasible, make available engineering and other technical services of the department, with or without charge, to any municipality or owner of a commercial airport requesting such services in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or aeronautical facilities.

(g) Any town, city or borough may lease any airport or contract for any airport facilities or privileges from any person, firm or corporation, municipal or private, operating a municipal or private airport in any location which has been approved by the commissioner.

Sec. 52-22. Courts may pass title to real property be decree. The superior court in the exercise of its equitable jurisdiction may pass the title to real property by decree, without any act on the part of any party holding title to the real property, when in its judgment it is the proper mode to carry the decree into effect. When the decree is recorded in the land records in the town where the real property is situated, it shall be, while in force, as effectual to transfer the real property as the deed of the party or parties holding title.

Sec. 48-17. Payment for property taken by condemnation by the state. Any amount found due from the state for property taken by condemnation proceedings, as provided in section 48-12, shall be paid upon order of the comptroller from the general funds of the state.

Sec. 48-17a. Reimbursement of owner for costs, disbursements and expenses on failure or abandonment of condemnation proceeding. The state court having jurisdiction of a proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (1) the final judgment is that the state agency cannot acquire the real property by condemnation; or (2) the proceeding is abandoned by the state.

Sec. 48-17b. Inverse condemnation. Plaintiff's award. The state court rendering a judgment for the plaintiff in an inverse condemnation proceeding brought against the state by the owner of real property, or the attorney general effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the attorney general reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

Sec. 48-17c. Payment of award. Any award made pursuant to section 48-17a or 48-17b shall be paid by the head of the state agency for whose benefit the condemnation proceedings was instituted.

Supreme Court, U.S.
FILED
JUL 12 1991
OFFICE OF THE CLERK

(2)

No. 90-1807

In The

Supreme Court of the United States

October Term, 1991

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT AND CONNECTICUT DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For A Writ Of Certiorari To The Connecticut Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

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QUESTION PRESENTED

Should petitioner's cause be reviewed by this Court?

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No. 90-1807

In The

Supreme Court of the United States

October Term, 1991

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT AND CONNECTICUT DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For A Writ Of Certiorari To The Connecticut Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

The respondents, State of Connecticut and the Connecticut Department of Transportation, pray that a writ of certiorari, as requested by the petitioner, not be issued to review the judgment of the Connecticut Supreme Court rendered on February 28, 1991.

STATEMENT OF THE CASE

The sole issue before the Connecticut Appellate Court, P. App. at App. 11,[1] and the Connecticut Supreme Court, P. App. at App. 12, was the granting by the Connecticut Superior Court of the respondents' motion to dismiss an amended complaint on the grounds of sovereign immunity in state court proceedings, P. App. at App. 8-10.

The history of litigation over three decades between the petitioner and the respondent, State of Connecticut, its officers and employees, is so unusual that a brief summary should aid this Court in its deliberation of the pending Petition.

This is the most recent in a long series of litigation between the parties and others going back to the year 1963 and the third time the parties have appeared before the Supreme Court of the United States.[2] All of these trial and appellate court actions concerned title to the same three parcels of land situated in the Town of East Granby, Connecticut at the end of Runway 6/24 at Bradley International Airport.

On January 4, 1978, a final judgment by stipulation of five re-opened and consolidated Superior Court cases

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[1] The Appendix to the petition is designated "P. App. at App. ___."

[2] *Augustus J. Simmons v. United States, et al.*, No. 83-1833, *cert. denied*, October 1, 1984. App. A-1. *Augustus J. Simmons v. J. William Burns, Commissioner, et al.* No. 88-693, *cert. denied*, November 28, 1988. App. A-2.

seemed to finally end the prior years of litigation. P. App. at App. 13-17.

The petitioner represented by counsel and appearing pro se, agreed to convey the subject land to the State for $385,600. The petitioner subsequently refused to accept the agreed upon compensation, and the State secured a Supplemental Judgment dated June 2, 1978, which reaffirmed the January 4, 1978 judgment and vested title to the three parcels in the State and ordered the State to deposit, with the Clerk of the Superior Court, $385,600 on the petitioner's behalf. P. App. at App. 18-31. In 1980, the Supreme Court of Connecticut recognized the validity of this stipulated final judgment in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980). P. App. at App. 5.

In compliance with the Supplemental Judgment, the State deposited $385,600 with the clerk. The clerk continues to hold these funds on deposit with the Connecticut National Bank for the benefit of the petitioner, encumbrancers and lienors, consistent with the Supplemental Judgment. As of February 1991, the balance, with accrued interest was approximately $518,600.[3]

In February 1984 the petitioner filed a "Claim for Declaratory Judgment" in the Superior Court. The petitioner sought a declaratory judgment on eleven different issues regarding the same three parcels of land. He also

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[3] These funds were recently drawn down upon by Court Order upon a Motion for Payment by a listed encumbrancer. The petitioner participated in and did not object to the same, and this process was consistent with the Judgment and Supplemental Judgment (*Simmons v. Wetherall*, No. 163875, June 11, 1990). App. A-3.

sought to void the judgment settling the prior litigation, which had been upheld by the Connecticut Supreme Court in 1980. The trial court denied the declaratory relief sought, and this decision was upheld by the Connecticut Appellate Court. (*Simmons v. Wetherall*, 3 Conn. App. 672, 491 A.2d 1908 (1985)).

Undaunted, the petitioner returned to the Superior Court in January of 1986 with another civil action seeking to relitigate the issues previously determined and affirmed in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980). The State's motion to dismiss was granted by the Court. This decision was also affirmed by the Appellate Court (*Simmons v. Burns*, 9 Conn. App. 802 (1986)), and a petition for certification to appeal was denied by the Connecticut Supreme Court on November 25, 1986 (*Simmons v. Burns*, 201 Conn. 815 (1986)).

The petitioner, refusing to acknowledge the finality of the prior judicial decisions, initiated yet another Superior Court action in August 1987. That action was, in essence, an attack on the June 2, 1978 Supplemental Judgment. The trial Court granted the State's Motion to Dismiss on the grounds of sovereign immunity.

Although this State action was dismissed, the federal defendant, the Federal Aviation Administration, petitioned for removal prior to the filing of the court's decision and, therefore, the State was before the U.S. District Court. The State filed a motion to dismiss as to the State defendants. This motion was granted by the Court (Dorsey, J.) on November 10, 1987 (Ruling on Motion to Dismiss, Docket No. H-87-732, App. A-6). The petitioner

moved to set aside this decision, and the Court (Cabranes, J.) denied this motion and dismissed the case with prejudice (Ruling on Pending Motions and Order March 15, 1988, Docket No. H-87-732. App. A-8).

It is of particular note that Judge Cabranes also enjoined the petitioner from filing in the U.S. District Court " . . . any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Wetherall* . . . 180 Conn. 587 (1980), and all the cases consolidated therewith." App. A-22.

The petitioner appealed to the United States Court of Appeals for the Second Circuit, which Court affirmed the U.S. District Court decision, including the injunction against further federal litigation. *Simmons v. Burns, et al.*, Order, Docket No. 88-6093, September 14, 1988. App. A-27.

This Supreme Court of the United States denied the petitioner's petition for a writ of certiorari, *Simmons v. Burns, et al.*, No. 88-693, *cert. denied*, November 28, 1988. App. A-2.

The petitioner has also sought direct relief in the federal court system on numerous occasions. In 1981 he initiated an action alleging that the taking of his land violated his constitutional rights, and in 1983 he initiated an action sounding in trespass and ejectment. These two cases were consolidated and the United States District Court (Cabranes, J.) dismissed the suits holding the issues to be barred by the doctrine of res judicata and also an impermissible collateral attack on a valid state court judgment. App. A-30. Judge Cabranes' order was

affirmed by the U.S. Court of Appeals for the Second Circuit on December 20, 1983. App. A-34, and this Supreme Court denied a petition for certiorari on October 1, 1984. *Simmons v. United States, et al.*, No. 83-1833, *cert. denied*, October 1, 1984. App. A-1.

Notwithstanding the above dispositions by both the state and federal courts, the petitioner initiated yet another federal court action in January of 1985. In an attempt to avoid the res judicata effect of the 1978 State court judgment, he alleged new violations of federal statutes by the State and other defendants. The central issue of this federal court litigation was the question of ownership of the three parcels of land, the subject of this Petition. On April 8, 1985, the District Court dismissed the petitioner's claims on the grounds of res judicata. The U.S. Court of Appeals, for the Second Circuit, affirmed this judgment on November 22, 1985 (App. A-37). In addition to affirming the trial court, the Court of Appeals' decision states as follows:

> We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should he seek once again to relitigate these same matters (App. A-38).

The litigation that is the subject of this Petition for a Writ of Certiorari is an alleged quiet title action under Connecticut law in state court. The Connecticut Supreme Court denied a petition for certification (P. App., at App.

12) to appeal from the Appellate Court decision (P. App., at App. 11), which decision affirmed the trial court's dismissal of the action (P. App., at App. 8-10).

The issues raised in this litigation are, in essence, the same that petitioner has repeatedly raised in the many prior actions instituted by the petitioner and which have been conclusively resolved against him. The petitioner now asks this Supreme Court to consider them yet again. Clearly, under Rule 10 of the Rules of the Supreme Court of the United States, the considerations governing review on the writ of certiorari establish beyond doubt that petitioner's cause does not warrant review.

REASONS FOR DENIAL OF THE PETITION

The respondents respectfully represent that there are no special or important reasons to support the Petition. The Connecticut Supreme Court denial of certification has not decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals, nor does the decision of the Connecticut Supreme Court decide a federal question in a way that conflicts with applicable decisions of this Supreme Court.

ARGUMENT

THE COURTS BELOW DID NOT ERR IN GRANTING AND AFFIRMING THE RESPONDENTS' MOTION TO DISMISS THE AMENDED COMPLAINT ON THE GROUNDS OF SOVEREIGN IMMUNITY.

A. Motion To Dismiss

The sole issue before the appellate courts was to determine if the trial court properly dismissed the amended complaint on the grounds of sovereign immunity, raised by the respondent's motion to dismiss. "The doctrine of sovereign immunity involves the jurisdiction of the court over the subject matter of the action." *Horton v. Meskill*, 172 Conn. 615, 624, 376 A.2d 359 (1977)).

In *Kinney v. State*, 213 Conn. 54, 58, 566 A.2d 426 (1989), the Connecticut Supreme Court most recently stated as follows:

> "Once an issue of subject matter jurisdiction is raised, the court must dispose of this legal question as a threshold matter. (citing cases). 'Whenever a court discovers that it has no jurisdiction, it is bound to dismiss the case . . . ' (citing cases)."

This case did not proceed beyond the granting of the State's motion to dismiss the amended complaint. The trial court decision on the "threshold matter" of subject matter jurisdiction and sovereign immunity was dispositive of the case, and there was no further judicial action taken on the allegations or merits of the amended complaint.

The petitioner raises issues that exceed the jurisdictional issues raised by the State's motion to dismiss and seeks to introduce, before this United States Supreme

Court, evidentiary matters or legal issues that go to the merits of the allegations in the amended complaint. Such evidentiary matters are properly within the jurisdiction of the trial court, absent the disposition of this matter by the trial court on jurisdictional issues in granting the respondents' motion to dismiss.

B. The Amended Complaint Is Barred By The Doctrine Of Sovereign Immunity.

It is an established principle of law, recognized and upheld by the Connecticut Supreme Court, that the State cannot be sued without its consent. *Horton v. Meskill*, 172 Conn. 615, 623, 376 A.2d 359 (1977); *Textron, Inc. v. Wood*, 167 Conn. 334, 339, 355 A.2d 307 (1974).

In *Duguay v. Hopkins*, 191 Conn. 222, 227, 464 A.2d 45 (1983), the Supreme Court reiterated the law as follows:

> It is well established law that the state is immune from suit unless it consents to be sued by appropriate legislation waiving sovereign immunity in certain prescribed cases. *Baker v. Ives*, 162 Conn. 295, 298, 294 A.2d 290 (1972); *Murphy v. Ives*, 151 Conn. 259, 262-63, 196 A.2d 596 (1963).

Two narrow exceptions to the doctrine of sovereign immunity are also set out in a footnote on page 227 of *Duguay v. Hopkins, supra.*[4] The courts below determined

---

[4] The State is subject to suit without consent in an action for declaratory judgment where the defendant state officer is allegedly proceeding under an unconstitutional statute or in excess of his statutory authority; *Horton v. Meskill*, 172 Conn.

(Continued on following page)

that the amended complaint does not fall within the purview or scope of these exceptions because the petitioner is seeking coercive relief, damages, costs and the setting aside of prior Superior Court judgments, as affirmed by the Connecticut Supreme Court. The courts below found that there is no proper nor sufficient allegation or claim that the respondents have proceeded under an unconstitutional statute or have acted in an unconstitutional manner. In addition, the relief sought by the petitioner would clearly be an undue interference with governmental functions, as the same would have a direct adverse impact on Bradley International Airport, the Connecticut Department of Transportation and the State of Connecticut.

The petitioner does claim that the instant case was filed as a quiet title action under C.G.S. Sec. 47-31, which is entitled "Action to settle title or claim interest in real or personal property." P. App. at App. 58-60.

Assuming, solely for this argument, that the amended complaint is brought under Sec. 47-31 C.G.S., this statute does not confer the trial court with jurisdiction over the subject matter. In *Struckman v. Burns*, 205 Conn. 542, 558, 534 A.2d 888 (1987), the Connecticut Supreme Court held:

(Continued from previous page)

615, 624, 376 A.2d 359 (1977); and in a suit for injunctive relief when the action does not defeat the purpose of the doctrine of sovereign immunity by undue interference with governmental functions. *Sentner v. Board of Trustees*, 184 Conn. 339, 439 A.2d 1033 (1981).

> It is a matter for the legislature, not this court, to determine when our state's sovereign immunity should be waived. "The question whether the principles of governmental immunity from suit and liability are waived is a matter for legislative, not judicial, determination. *Rogan v. Board of Trustees*, 178 Conn. 579, 582, 424 A.2d 274 (1979); *Bergner v. State*, 144 Conn. 282, 286-87, 130 A.2d 293 (1957)." *Duguay v. Hopkins*, 191 Conn. 222, 228, 464 A.2d 45 (1983). *Sovereign immunity may be waived only through a statute.* Id. Any statutory waiver of immunity must be narrowly construed. Id. *"The State's sovereign right not to be sued may be waived by the legislature, provided clear intention to that effect is disclosed 'by the use of express terms or by force of a necessary implication.' Baker v. Ives*, [162 Conn. 295, 298, 294 A.2d 290 (1972)]; *Murphy v. Ives*, [151 Conn. 259, 262-63, 196 A.2d 596 (1963)]." Id. (Emphasis added).

Clearly, Sec. 47-31 C.G.S. does not waive sovereign immunity, as the statute does not expressly nor by force of necessary implication provide the required clear intention.

C. Constitutional Issues

It is recognized that under proper circumstances and with the proper framing of a complaint, the doctrine of sovereign immunity is not available as a defense for just compensation arising under Article First, Section 11 of the State Constitution. See *Textron, Inc. v. Wood*, 167 Conn. 334, 342, 355 A.2d 307 (1974).

The Connecticut Supreme Court has clarified the essentials of a complaint if constitutional issues are to be raised.

> The complaint, to survive the defense of sovereign immunity, must allege sufficient facts to support a finding of a taking of [property] in a constitutional sense . . . " *Horak v. State*, 171 Conn. 257, 261, 368 A.2d 155 (1976). Where "the complaint is insufficient to establish an unconstitutional taking . . . the doctrine of sovereign immunity is a sufficient bar to the jurisdiction of the court" Id., 262.

Upson v. State, 190 Conn. 622, 625, 461 A.2d 991 (1983).

In *Upson*, 626, the Supreme Court declared that the *mere allegation* of wrongful taking, coupled with an allegation of constitutional violation, are *not sufficient* to preclude the court from an inquiry concerning a claimed jurisdictional defect such as sovereign immunity. At page 626 of *Upson*, supra, the Court stated as follows:

> Regardless of the phraseology in the nature of a conclusion employed by the pleader, if the fact of the record indicates that the court is without jurisdiction, the complaint must be dismissed. *Horak v. State*, supra, 260. A reading of the trial court's decision demonstrates conclusively that the court analyzed the facts alleged in the complaint and concluded that those facts did not amount to an unconstitutional taking, and that, therefore, the court lacked jurisdiction. We concur in the conclusion of the trial court that the record on its face discloses that the plaintiff was fully compensated, that there was no unconstitutional taking, and that the defendant's motion to dismiss was correctly granted.

The courts below found the facts alleged in the amended complaint do not amount to a proper allegation of unconstitutional activity by the State defendants. The appellate courts below determined that the amended complaint in this matter, as in *Upson*, supra, fails to meet

the tests established by the Connecticut Supreme Court, and thus, the trial court was correct in its analysis of the facts alleged and in granting the State's motion to dismiss.

D. Violation Of Federal Law

The petitioner argues that the existence of a federal statutory scheme for relocation assistance and real property acquisition (Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC Sec. 4601, *et seq.* "Uniform Act") is all that is required to defeat the respondents' immunity from suit in the Connecticut courts. The respondents argue that such an assertion is without a foundation or basis in law.

The issue of the Uniform Act (42 USC Sec. 4601 *et seq.*) was not an issue before the trial court, and it is not cited in the amended complaint as a basis for any federal claim or as a waiver of sovereign immunity.

Notwithstanding the argument offered by the petitioner, the federal law itself provides an answer by express provision as follows:

> Sec. 4602 Effect upon property acquisition
>
> (a) The provisions of Section 4651 of this title *create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase* or condemnation.
>
> (b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971. (42 USC Sec. 4602) (Emphasis added).

42 USC Sec. 4651 provides for the adoption, for federal programs, of a uniform policy on real property acquisition practices, and 42 USC Sec. 4655 requires that the states also be guided by the same policy.

The courts have interpreted 42 USC Sec. 4602 as follows:

> The relocation and acquisition statutes were intended to set forth guidelines rather than to create rights of the kind giving rise to a legal cause of action. *Consumer Power Co. v. Costle*, 468 F. Sup. 375 (D. Mich, 1979) *aff'd*, 615 F.2d 1147 (6th Cir. 1980).
>
> No rights are created in favor of property owners enforceable in district court, and this statutory scheme merely sets policy guidelines to be followed in acquisition of real property. *Rubin v. Department of Housing and Urban Development*, 347 F. Supp. 555 (D. Pa. 1972).
>
> The congressional intent behind 42 USC Sec. 4602(a) is to preclude judicial review of federal and State agency actions under real property acquisitions set forth in 42 USC Sec. 4651. *Barnhart v. Brinegar*, 362 F. Supp. 464 (W.D. Mo. 1973).

By its express terms, the Uniform Act does not waive the State's sovereign immunity from suit.

The petitioner misleads this Court in his reliance upon *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S. Ct. 2666 (1976). *Fitzpatrick* was a Title VII, Civil Rights Act federal court action, which Congress authorized to be brought against a state defendant under Section 5 of the Fourteenth Amendment. The issue was whether there was an express waiver of a state's sovereign immunity under the Eleventh Amendment. *Fitzpatrick* was not an action

brought under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 USC Sec. 4601 *et seq.*), nor did it involve the defendant's sovereign immunity in state court actions.

Similarily, *Parden v. Terminal R. Co.*, 377 U.S. 184, 84 S. Ct. 1207 (1964), is not applicable to the matter before this Court, as in *Parden*, there was a congressional intent to abrogate the immunity conferred by the Eleventh Amendment. The Uniform Relocation Assistance and Real Property Acquisition Policies Act does not contain a provision that expressly creates a cause of action against the State. In fact, the contrary is set forth in 42 USC Sec. 4602.

The petitioner has misread the case of *New Haven v. East Haven*, 35 Conn. Supp. 157, 402 A.2d 345 (1977), and tortures its holding in its favor. The *New Haven* case is founded on Connecticut law and has no relevance to the federal law cited by the plaintiff. East Haven had attempted to acquire, by condemnation, a portion of Tweed-New Haven Airport, owned by the City of New Haven, but located in East Haven. New Haven sought to enjoin this action and was successful. There was no issue of sovereign immunity nor waiver of immunity.

The case of *City of Columbia v. Costle*, 710 F.2d 1009 (1983), cited by the petitioner does not even discuss the issue of a state's sovereign immunity. The case did involve the Uniform Act, but the issue was a contract dispute over grant agreement language between the municipality and the federal Environmental Protection Agency.

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

Respondents

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APPENDIX

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 1, 1984

Mr. Gerard J. Dowling
P.O. Box 120
Hartford, CT 06101

Re: Augustus J. Simmons,
v. United States, et al.
No. 83-1833

Dear Mr. Dowling:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,
Alexander L. Stevas, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 28, 1988

Mr. Carl J. Schuman
Office of Atty. General
30 Trinity Street
Hartford, CT 06106

Re: Augustus J. Simmons,
v. J. William Burns, Commissioner, Connecticut Department of Transportation, et al.
No. 88-693

Dear Mr. Schuman:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk
/s/ Joseph F. Spaniol, Jr.

No. 20 21 21-8

STATE OF CONNECTICUT

VS. AUGUSTUS J. SIMMONS : SUPERIOR COURT

NO. 19 92 30-9

AUGUSTUS J. SIMMONS : JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN AT HARTFORD

VS.

SAMUEL KANNELL, ET AL

NO. 14 09 65

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS
and
CHARLES SIMMONS

NO. 16 29 23

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 16 38 75

AUGUST J. SIMMONS

VS.

HORACE B. WETHERELL, ET AL : MAY 29, 1990

MOTION FOR PAYMENT

JEROME DIAMOND; hereby moves the court to for [sic] an order of payment of a mortgage from Augustus J. Simmons to Jerome Diamond including all costs of foreclosure.

In support of said Motion he represents:

1. Said mortgage was supposed to have been paid in full by virtue of the decision of Judge John Brennan and a release to have been filed on the land records;

2. Funds are being held in the name of Augustus J. Simmons by the court for payment of liens on the property;

3. The State of Connecticut has taken the position before the court that Augustus J. Simmons can file a Motion for Payment with the court;

4. In the absence of payment by the court, Augustus J. Simmons will suffer a foreclosure of his land.

Wherefore, the court should grant the Motion and order payment of the entire mortgage debt to Jerome Diamond and all costs for foreclosure in Case No. CV 87 0327480 S.

ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

JEROME DIAMOND
By /s/ Richard B. Laschever
His Attorney

ORDER

The foregoing Motion having been heard by the Court, it is ORDERED: GRANTED. The sum of $116,552.28 shall be paid to JEROME DIAMOND, c/o ATTY. RICHARD LASCHEVER from said fund.

JUNE 11, 1990

BY THE COURT

/s/ illegible

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

-vs- : Civil No. H-87-732

J. WILLIAM BURNS, et al. : (PCD)

RULING ON MOTION TO DISMISS

Plaintiff commenced this action in state court on August 10, 1987. The action was removed to this court on the petition of the defendant Administrator of the Federal Aviation Administration. Defendants Julian Tashjian, Secretary of the State of Connecticut, and William Burns, Commissioner of the Connecticut Department of Transportation, move to dismiss the action as to them.

Plaintiff's complaint against the state defendants essentially seeks to quiet title to certain parcels of land and to eject the State of Connecticut from possession of that land. The complaint is only the latest in a long line of state and federal actions which plaintiff has filed relating to the same subject. However, these issues were validly and finally adjudicated in *Simmons v. Wetherall*, No. 163875 (Superior Court January 4, 1978, as modified June 2, 1978). The judgment entered in that case was affirmed on appeal by the Connecticut Supreme Court. *Simmons v. Wetherall*, 180 Conn. 587 (1980). Plaintiff is bound by that judgment through the doctrine of res judicata. Moreover, his complaint is impermissible either as an attempt to appeal to this court from the state court judgment, *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), or to collaterally attack that judgment.

For the foregoing reasons, the motion of the state defendants to dismiss the complaint is granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 10th day of November, 1987.

/s/ Peter C. Dorsey
Peter C. Dorsey
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

v. : CIVIL NO. H-87-732(JAC)

WILLIAM BURNS, et al. :

RULING ON PENDING MOTIONS
AND ORDER

(Filed March 15, 1988)

This represents the latest, and this court hopes, the final chapter in the epic tale of one *pro se* plaintiff's passion for engaging in vexatious litigation. Plaintiff Augustus Simmons has struggled for over twenty-four years to control several parcels of land situated in the Town of East Granby, parcels which long ago became part of Bradley Interational [sic] Airport. The instant action seeks, *inter alia*, declaratory and injunctive relief and damages against various state and federal defendants, all of which claims rest upon plaintiff's reassertion of his lawful ownership of these parcels. Insofar as is relevant to the pending motions, plaintiff also asserts various complaints against two attorneys who represented him at an earlier stage in this struggle. Presently pending is an assortment of motions filed by plaintiff of varying degrees of intelligbility [sic] and importance. Because the determinations on the merits of Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) ("Motion to Set Aside Dismissal"), the Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) and Defendant Rogin and Hirtle's Motion for Summary Judgment (filed Jan. 6, 1988) are dispositive of the claims against

these defendants, these are the only motions which the court will discuss at any length.

For the reasons set forth below, the complaints against the state and federal defendants, are DISMISSED WITH PREJUDICE; summary judgment is GRANTED for defendants Rogin and Hirtle.

I

BACKGROUND

It is difficult to summarize the tortuous path of this litigation. We rehearse this history here because the repetitiveness of it is in large part the ground for our decision. Fully fifteen years ago, our Court of Appeals described the beginnings of the story as follows:

> The battle began [in 1964] when the state aeronautics commission moved under Conn. Gen. Stat. § 15-79, which then governed taking of land for airports, to condemn the Simmons property [adjoining Bradley International Airport]. Pursuant to the statute, a petition for the determination of compensation was brought by the state in Hartford Superior Court; a judgment was rendered finding the taking reasonable and appointing a referee to assess damages. Anastasia Simmons [plaintiff's mother] appealed to the Connecticut Supreme Court, which reversed, finding error in the trial court's exclusion of evidence offered to show that property similarly situated had not been taken. *State v. Simmons*, 153 Conn. 351, 216 A.2d 632 (1966). Since this evidence was held to be relevant on the issue of whether the state had acted arbitrarily in singling out the Simmons land, the case was remanded for a new trial.

While the first suit was pending, Mrs. Simmons died, and Augustus entered the fray. Before the second trial began, he raised as an affirmative defense to the taking the fact that the state authorities had not received the requisite statutory approval from the Town of East Granby before proceeding with the condemnation. The trial court agreed; the Supreme Court affirmed. *State v. Simmons,* 155 Conn. 502, 234 A.2d 835 (1967). Round two for the Simmons family.

Undaunted, the state tried again, this time attempting to use Conn. Gen. Stat. § 48-12, the general condemnation statute, which provided for procedures different from section 15-79 in cases where compensation could not be agreed upon by the parties. The Simmons family prevailed again, in *Simmons v. State,* 160 Conn. 492, 280 A.2d 351 (1971), when the Supreme Court held that the state was required to use the section 15-79 procedure.

At about the same time the abortive condemnation attempts were taking place, a related dispute arose between the state and Simmons over some land upon which runway lights had been placed. Simmons claimed that the land was his; the state said it was the state's. An ejectment action followed. In *Simmons v. Parizek,* 158 Conn. 304, 259 A.2d 642 (1969), the Supreme Court held that since the complaint did not allege that the state officials had acted unconstitutionally or in a manner unauthorized by some statute, the suit was barred by the doctrine of sovereign immunity. Appellant took the hint, and on October 14, 1969 resurrected the ejectment action, this time alleging that the taking of the land and the erection of runway lights was done both unconstitutionally and without statutory authorization. That suit, Docket No. 162923,

> Hartford Superior Court, [was] still pending [as of January, 1973].
>
> Shortly before the Connecticut Superior Court decision in *Simmons v. Parizek, supra,* a Special Act was passed by the Connecticut General Assembly, allowing Augustus Simmons to sue the state for damages over "loss of use of land," arising out of the bumbling condemnation proceedings. On January 5, 1970, Simmons brought such a suit, Docket No. 163875, Hartford Superior Court; [as of January, 1973,] the action [was] still pending.
>
> Thus, if there ever was a litigant who knew that his claims would be fairly heard in the state courts, Augustus Simmons was he. Nevertheless, perhaps for a change of setting, he instituted [a] section 1983 action on December 22, 1971 [in the United States District Court for the District of Connecticut, *Simmons v. Wetherall,* Civil No. 14806] alleging that his property was taken without due compensation, and seeking damages.

Simmons v. Wetherall, 472 F.2d 509, 510-11 (2d Cir.), *cert. denied,* 412 U.S. 940 (1973); *see also Simmons v. McKone,* 158 Conn. 71 (1969) (lawsuit concerning plaintiff's succession to the land).

Judge Blumenfeld dismissed the section 1983 action after finding that, at most, Simmons had alleged a tortious interference with his property by state officials. Upon review of Judge Blumenfeld's decision, our Court of Appeals determined that Simmons' claim also involved a boundary dispute; accordingly, it affirmed in part and remanded in part so that the district court could stay the action pending resolution of one of two state court proceedings. *See Simmons v. Wetherall,* 472 F.2d at 511-12.

In December, 1977, the plaintiff retained the firm of Rogin, Nassau, Caplan, Lassman & Hirtle to represent him in his then-pending cases. Attorneys Edward Rogin and Robert Hirtle, two defendants in the instant action, were partners in that firm. Negotiations ensued, and Docket No. 163875 was consolidated with Docket No. 162923 and three other related actions that Simmons had pending in the Connecticut Superior Court. On December 13, 1977, state referee Louis Shapiro, with the consent of the parties, entered a final judgment by stipulation in the consolidated actions, a judgment which promised to end years of litigation. Pursuant to the judgment by stipulation, the plaintiff, still represented by Rogin, Nassau, Caplan, Lassman & Hirtle, agreed, *inter alia*, to sell the disputed parcels of land to the state for $518,000.

The resolution of the matter was short-lived. Only days after the settlement, Simmons voiced his refusal to accept the terms of the judgment, terms which he had previously stated were satisfactory. Specifically, Simmons wanted to retain one piece of "Parcel A," the whole of which he had agreed to sell on December 13, 1977. Again, the plaintiff's attorneys negotiated. On January 4, 1978, the state agreed to allow the plaintiff to retain the requested portion of Parcel A. In return, the plaintiff agreed to sell the remaining disputed land for $385,600. He further agreed that the '[j]udgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases." Memorandum in Support of Motion to Dismiss (filed Oct. 7, 1987) ("State Defendant's Memorandum"), Exhibit A at 3. Pursuant to the new

agreement and judgment, a closing was scheduled for January 24, 1978, at which time the exchange of title was to be consummated. *See* Affidavit of Robert Hirtle *attached to* Motion for Summary Judgment by Defendants Edward Rogin and Robert Hirtle (filed Jan. 6, 1988) at 2-3.

Before the closing, however, Simmons apparently encumbered the property by leasing a portion of it, notwithstanding that he knew title was to vest in the state pursuant to the stipulated judgment. Simmons took this action without the prior knowledge of his attorneys, and eventually, he refused to cooperate with his attorneys. On April 20, 1978, the firm sent the plaintiff a notice of its withdrawl [sic] as his counsel. *See id.* at 3.

On June 1, 1978, the plaintiff, acting *pro se*, filed a motion to reopen the judgment entered January 4, 1978. In rejecting the plaintiff's request, the state referee wrote:

> The plaintiff argued that Attorney Robert L. Hirtle, Jr., of the firm Rogin, Nassau, Caplan, Lassman and Hirtle, failed to disclose to him that he once served as an assistant attorney general for the State. His claim is that this created a conflict of interests and thereby he was not fully and adequately represented at the prior proceedings. It is true that Hirtle served as an assistant attorney general between 1965 and 1971. Thereafter he joined the Rogin law firm. Hirtle stated that before the Rogin firm entered the settlement talks he discussed with the plaintiff his former affiliation. The plaintiff was informed by his other counsel that Hirtle's intervention would be beneficial to the plaintiff. As it turned out, Attorneys Salzman and Silverman who represented the plaintiff in the trial before me of case #162923, *Simmons v. Parizek, et al.*

which went to judgment, were unable to negotiate a post judgment settlement with the state. The Rogin firm entered an appearance at a later date and the participation of attorneys Edward Rogin and Hirtle in discussions with the attorney general's office brought results. At a date prior to January 4, 1978, being on December 13, 1977, these five cases were settled by agreement with plaintiff and all attorneys. At this point, the plaintiff lauded his counsel and stated for the record his satisfaction with the settlement in the amount of five hundred and eighteen thousand dollars. A judgment was entered for the amount with full and clear consent of the plaintiff. A few days later, the plaintiff suddenly notified the court that he was unhappy with the settlement. As a result, with consent of counsel, the judgment was vacated . . . .

Plaintiff and his counsel, following further discussion with the Attorney General's office, came before the undersigned at a hearing on January 4, 1978. As a result of further discussions between the parties, an agreement was reached whereby the plaintiff was to retain the portion of land to which he desired to retain title. . . . Following this action judgment was entered on January 4, 1978 . . . .

I have carefully reviewed the plaintiff's claims under his motion. I find that in entering the judgment of January 4, 1978, the plaintiff was fully, adequately and skillfully represented by counsel at these prior proceedings. I find no conflict of interests as may be related to Attorney Hirtle. He rendered the highest degree of service and devotion to his client's (Plaintiff's) interest. As a result, the settlement reached was, in my judgment, the optimum. The plaintiff stated for the record, on January 4, 1978, how pleased he was with the result.

I must conclude that I find no merit in plaintiff's motion. He has played fast and loose with the court, his counsel and the state. His conduct is devious indeed.

State Defendants' Memorandum, Exhibit E.

Accordingly, the state secured a supplemental judgment dated June 2, 1978, *see id.*, Exhibit B, under which all encumbrances on the property were to be removed, and title to the disputed parcels of land automatically was vested in the state. The state referee further ordered the state to deposit with the Clerk of the Superior Court $385,600 on behalf of plaintiff. Plaintiff appealed the stipulated judgment, and the Supreme Court upheld it and the findings of the trial referee. *See Simmons v. Wetherall*, 180 Conn. 587 (1980) (*per curiam*). As of June 29, 1987, pursuant to this judgment, there was on deposit in United States treasury bills the sum of $497,314.24. This sum represents principal and interest and apparently is available to plaintiff upon appropriate motion to the Clerk of the Superior Court. *See* State Defendants' Memorandum, Exhibits C and D.

Ignoring Principles of res judicata and collateral estoppel, plaintiff then commenced a new series of state and federal court actions in which he raised claims which were, without exception, reiterations of the claims ultimately decided by the state Supreme Court in *Simmons v. Wetherall*.

For example, in 1981, the plaintiff initiated an action in this court in which he alleged that the taking of his land had violated his constitutional rights. *See Simmons v. United States Government*, Civil No. H-81-778 (JAC). In

1983, he initiated another action which sounded in trespass and ejectment. *See Simmons v. United States of America*, Civil No. H-83-225 (TEC). These two cases were consolidated in this court and dismissed as barred by res judicata in an order also noting that, by bringing these cases in federal court, plaintiff was impermissibly mounting collateral attacks on a valid state court judgment. *See* Order (dated Aug. 16, 1983) (Cabranes, J.). Our court of appeals affirmed that decision on appeal. *See Simmons v. Powers, Simmons v. United States*, Docket No. 83-6257 (2d Cir. Dec. 20, 1983) (unpublished order); *see* State Defendants' Memorandum, Exhibits F and G. Thereafter, the United States Supreme Court denied plaintiff's petition for a writ of certioriari [sic]. *See* State Defendants' Memorandum, Exhibit H.

Notwithstanding the rejection of his claims by every state and federal trial and apellate [sic] court having any arguable basis for assuming jurisdiction, this zealous litigant initiated yet another federal lawsuit in January, 1985. The plaintiff's strategy to avoid the res judicata effect of the 1978 state supplemental judgment was to allege new violations of federal statutes and to bring in an assortment of new defendants to join the old. Again, the court dismissed the complaint on res judicata grounds. *See Simmons v. Dole*, Civil No. H-85-45 (D.Conn. Apr. 8, 1985) (Blumenfeld, J.). Again, plaintiff appealed and the Court of Appeals affirmed, stating:

> We agree with the April 8, 1985, order of the district court dismissing appellant's claims on the ground of res judicata. We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many

> years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should be seek once again to relitigate these same matters.

Simmons v. United States, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order).

Undeterred, plaintiff mounted another attack in Connecticut Superior Court just a few months later. In the new suit, filed in January 1986, he attempted to recover damages from the state. The state's motion to dismiss was granted. The Connecticut Appellate Court affirmed the dismissal, *see Simmons v. Burns*, 9 Conn.App. 802 (1986) (*per curiam*), and the Connecticut Supreme Court denied certification to appeal, *see Simmons v. Burns*, 201 Conn. 815 (1986).

II

THE INSTANT ACTION

Plaintiff commenced the instant action in Connecticut Superior Court on August 10, 1987. The action was removed on the petition of one of the defendants, the Administrator of the Federal Aviation Administration. The only even arguable new element in this suit is a claim that plaintiff has suffered from legal malpractice at the hands of his former attorneys, Edward Rogin and Robert Hirtle. *Cf.* Opinion of State Referee, quoted above in this Ruling at 5-6.

Prior to transferring the case to the docket of this court, Judge Dorsey granted a motion to dismiss the

action as to state defendants Julia Tashjian, Secretary of the State of Connecticut, and J. William Burns, the Commissioner of the Connecticut Department of Transportation on res judicata grounds. *See Simmons v. Burns*, Civil No. H-87-732, Ruling on Motion to Dismiss (D.Conn. Nov. 19, 1987). Plaintiff has filed what can be construed as an objection to the granting of the state defendants' motion to dismiss, which is one of the pending motions to which this ruling is addressed.

Thereafter, defendants Rogin and Hirtle filed a motion for summary judgment and the federal defendant filed a motion to dismiss. These pending motions present the court with the opportunity to write the final chapter of this lengthy and tiresome story.

A. The Motions to Dismiss

The doctrine of res judicata bars relitigation of the same cause of action between the same parties or their successor in interest. *See Mohegan Tribe v. Connecticut*, 528 F.Supp. 1359, 1370 n. 2 (D.Conn. 1982). It is an absolute bar not only as to every matter which was offered to sustain a claim, but also as to any other matter which might have been offered for that purpose. *See State v. Aillon*, 189 Conn. 416, 423, *cert. denied*, 464 U.S. 837 (1983). "[A] federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment [sic] was rendered." *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). Moreover, a litigant "may not engage in extensive proceedings throughout the state court system, and then, after every point has been

decided against him by the state courts and the Supreme Court has denied certiorari, make a fresh start in federal court." *Friarton Estates Corp. v. City of New York*, 681 F.2d 150, 159 (2d Cir. 1982). Thus, issues which were actually litigated, or which could have been litigated, in a state court proceeding are entitled in a federal suit to the same preclusive effect accorded them by the state. *Migra*, 465 U.S. at 83; *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *accord Kaufman v. Somers Board of Education*, 368 F.Supp. 28, 33 (D.Conn. 1973).

In Connecticut, a valid judgment entered by agreement or consent operates to end the controversy to the same extent as would a valid judgment rendered after adjudication on the merits. *See Connecticut Pharmaceutical Association v. Milano*, 191 Conn. 555, 558 (1983); *Gagne v. Norton*, 189 Conn. 29, 34 (1982). The Connecticut Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587 (1980), upheld the actions of the state referee whereby title of the disputed land vested in the State of Connecticut. In the instant action, plaintiff asserts claims which rest upon his purported legal ownership of the same land.

Accordingly, Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) is DENIED, and the case against them is dismissed with prejudice.

Because the claims against the federal defendant rest upon the claim that the State of Connecticut is in wrongful possession of plaintiff's land, they are likewise barred. The Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) is therefore GRANTED, and the case against him is dismissed with prejudice.

B. Defendants Rogin's and Hirtle's Motion for Summary Judgment

Liberally construed, the complaint against Attorneys Rogin and Hirtle can be viewed as alleging fraud, breach of contract or legal malpractice. The adequacy and loyalty of their representation of plaintiff was explicitly addressed and decided against plaintiff by the state referee; the referee's denial of plaintiff's motion to reopen the judgment based claims of inadequate representation were upheld by the Connecticut Supreme Court in *Simmons v. Wetherall,* 180 Conn. at 589. Because the record does not demonstrate clearly that Rogin and Hirtle have been parties to litigation on the merits of any of these claims, there is some doubt whether they would be entitled in Connecticut courts to assert the prior state court judgment as a defense. *See State v. Ellis,* 197 Conn. 436, 462-69 (1985); *Doe v. Maher,* 40 Conn.Supp. 394, 405, 515 A.2d 134 (New Haven, 1986). It could be argued, consistently with the rationales of these decisions, that defendants *should* be so entitled because this plaintiff certainly has had a full and fair opportunity to litigate the claims. *See DiMauro v. Pavia,* 492 F.Supp. 1051, 1059 n. 7 (D.Conn.), *aff'd mem.,* 614 F.2d 1286 (2d Cir. 1979).

In any event, the record reveals another clear ground for granting summary judgment for Rogin and Hirtle. It is undisputed that these two attorneys ceased representing plaintiff almost nine years ago. Moreover, since plaintiff explicitly questioned the adequacy of their representation before the state referee in 1978, he cannot credibly argue that, until recently, he was unaware of the harm which he is alleged to have suffered at their hands.

Any suit based upon their representation is certainly barred by whatever statute of limitations might arguably be applicable. *See* Conn. Gen. Stat. § 52-576 (six-year limitation for actions based on simple or impled [sic] contract) and § 52-577 (three-year limitation for actions in tort, held applicable to legal malpractice in *Shuster v. Buckley*, 5 Conn.App. 473, 477 (1985)).

C. Prospective Relief

Finally, the court would be remiss if it did not put an end to plaintiff's vendetta and relieve its victims from the burden of vexatious relitigation of these issues. *See In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984), *cert. denied*, 106 S.Ct. 807 (1986); *see also Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). The District Court has the authority to issue "all writs necessary or appropriate in and of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). It may be appropriate in some circumstances to enter an injunction to prevent the continuation of harassments which come from frivolous and repetitious lawsuits. *See, e.g., Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983). Courts are not to be used as a vehicle for harassment by a litigant who asserts the same baseless claim repeatedly in slightly altered guises. *See Kane v. City of New York*, 468 F.Supp. 586, 590 (S.D.N.Y.), *aff'd mem.*, 614 F.2d 1288 (2d Cir. 1979). Although an order enjoining a particular plaintiff from commencing future actions is an unusual step, the courts have not hesitated to enter such orders where a litigant continues to abuse the legal process, and defendants, by filing meritless claims. *See, e.g., In re Martin-*

Trigona, 763 F.2d 140 (2d Cir. 1985), *cert. denied*, 106 S.Ct. 807 (1986).

Apart from such extraordinary and pathological examples as Anthony R. Martin-Trigona, it would be difficult to find a litigant more pertinacious that [sic] Augustus J. Simmons. This plaintiff has brought approximately one dozen suits arising out of the state's initially inept attempt to condemn his land over twenty years ago. At this point in his "legal career," he could not credibly argue that he believes, in good faith, that his claims have merit. *See* Fed. R. Civ. P. 11. He has harassed a variety of defendants and has squandered the resources of both state and federal courts, all due to his persistent refusal to accept as final the 1978 supplemental judgment of the Hartford Superior Court, and the 1980 decision of the Connecticut Supreme Court upholding that judgment. Our Court of Appeals has warned him unequivocally that he would risk the imposition of sanctions if he persisted in filing the same claim. It is difficult to believe, however, that any sanction, short of an injunction, would either be effective or appropriate to protect potential defendants and preserve judicial resources for other litigants who await their own day in court.

Accordingly, the court hereby ENJOINS plaintiff, Augustus J. Simmons, from filing in the United States District Court for the District of Connecticut or any other federal court any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Weatherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*,

180 Conn. 587 (1980), and all the cases consolidated therewith.

1. This injunction includes any filing in which the harm is alleged to have arisen from or relate to the plaintiff's ownership, at one time, of the parcels of land in the Town of East Granby as described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all cases consolidated therewith.

2. Plaintiff is also enjoined from filing any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit of such lawsuit related to his alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all cases consolidated therewith.

3. This injunction applies only to lawsuits of the sort described above filed in the federal courts, including the United States District Court for the District of Connecticut. Nothing in this order shall be construed as restricting plaintiff's ability to file a suit in any state court. Nor shall it be construed as restricting plaintiff's ability to file suit in any federal court, so long as the lawsuit does not relate to plaintiff's alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all the cases consolidated therewith.

4. Nothing in this order shall be construed to deny plaintiff access to the United States Court of Appeals for the Second Circuit, or to the Supreme Court of the United States, in any matter.

5. Nothing in this order shall be construed to prohibit Augustus J. Simmons from filing complaints under 28 U.S.C. § 372(c), provided, however, that nothing in this order, and nothing in this subsection in particular, shall be construed as intimating any view on the constitutionality of 28 U.S.C. § 372. *See, e.g.*, Rule § 0.24, Complaints with Respect to Conduct of Judges, Rules of the United States Court of Appeals for the Second Circuit (Nov. 1983) (identical disclaimer by the Judicial Council of the United States Court of Appeals for the Second Circuit).

6. All future complaints submitted by plaintiff to this court shall first be reviewed for compliance with this order. Any complaint that does not comply with this order shall not be docketed and will be returned to plaintiff.

In entering this injunction, the court reserves the right to order such additional relief as may become appropriate or necessary to accomplish its objective of protecting individuals and the system of justice from further abuse by this litigant.

III

CONCLUSION

For the reasons stated above:

(1) Plaintiff's Motion to Set Aside Dismissal of State Defendants is DENIED, and the case against the state defendants in DISMISSED with prejudice.

(2) The Federal Defendant's Motion to Dismiss is GRANTED, and the case against it is DISMISSED with prejudice.

(3) The Motion for Summary Judgment of Defendants Rogin and Hirtle is GRANTED. There being no just cause for delay, judgment shall enter forthwith for defendants Rogin and Hirtle. *See* Fed. R. Civ. P. 54(b).

(4) The other pending motions, identified in the note at the margin and having been resolved by decisions on the above motions, are denied as moot.[1]

(5) Plaintiff is enjoined, as specified above, from filing any lawsuit in federal court in which he asserts the same claims as were litigated, or might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Wetherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*, 180 Conn. 587 (1980), and all the cases consolidated therewith.

It is so ordered.

Dated at New Haven, Connecticut, this 15th day of March, 1988.

Jose A. Cabranes
United States District Judge

NOTE

[1] The following motions filed by plaintiff are hereby denied as moot: Motion for Payment of Rent (filed Sept. 29, 1987); Motion for Order of Referral and Enforcement of 49 U.S.C. § 2216 (filed Nov. 12, 1987); Petition for Hearing on Determination of Due Process (Civil Process) Under 14th Amendment Upon all Necessary Parties (filed Nov. 19, 1987); Motion for Payment of Real Property Taxes by Federal Aviation Administration under 49 CFR § 25.106(c) (filed Nov. 25, 1987); Motion to Set Aside State Court Judgment Rendered Without the "Necessary Parties" (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Just Compensation (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Jurisdiction and in Violation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Due Process (filed Dec. 30, 1987).

CONN
H-87-732
CRABRANES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * *

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of September one thousand nine hundred and eighty-eight.

Present:

HONORABLE J. EDWARD LUMBARD,
HONORABLE J. DANIEL MAHONEY,
Circuit Judges

HONORABLE CON. G. CHOLAKIS,
*District Judge.**

AUGUSTUS J. SIMMONS,
Plaintiff-Appellant,

-v.-

J. WILLIAM BURNS, et al.,
Defendants-Appellees.

ORDER
88-6093

(Filed
SEP 14 1988)

ISSUED AS
MANDATE:

October 5,
1988

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* Hon. Con. G. Cholakis, District Judge, United States District Court for the Northern District of New York, sitting by designation.

Appeal from the United States District Court for the District of Connecticut.

This cause came to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is AFFIRMED, and appellant is assessed double court costs.

1. We affirm for the reasons stated in the ruling of the district court. We also consider this a frivolous appeal. This is appellant's third appearance before this court in the past five years, and on each occasion res judicata barred or bars his reassertion of the same claims which were either fully litigated or should have been litigated in prior state and federal proceedings. In his last appearance before this court, *Simmons v. United States of America, et al.*, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order), appellant Simmons was placed on notice that he risked imposition of sanctions should he seek to appeal the same matters again.

2. It is accordingly appropriate to assess double court costs against appellant pursuant to Fed. R. App. P. 38.

3. We specifically call to appellant's attention that we affirm the order of the district court in all respects, including its injunction against further federal litigation

concerning these claims, and that any violation of that injunction may be punished as a contempt of court.

/s/ J Edward Lumbard
J. Edward Lumbard,

/s/ J Daniel Mahoney
J. Daniel Mahoney,
Circuit Judges

/s/ Con. G Cholakis
Con. G. Cholakis,
District Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS, Plaintiff v. UNITED STATES GOVERNMENT, THE FEDERAL AVIATION ADMINISTRATION; J. LYNN HELMS, ADMINISTRATOR, FAA STATE OF CONNECTICUT; STATE DEPARTMENT OF TRANSPORTATION; J. WILLIAM BURNS, COMMISSIONER, STATE DEPARTMENT OF TRANSPORTATION, Defendants	)	Civil Action No. H-81-778 JUNE 21, 1983 CONSOLIDATED ACTIONS

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) the State Defendants hereby move the Court to dismiss these actions for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted.

The State respectfully requests seven days in which to file its memorandum in support of this action.

STATE DEFENDANTS

Joseph I. Lieberman
Attorney General

By /s/ Gerard J Dowling
Gerard J. Dowling
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS, Plaintiff v. UNITED STATES OF AMERICA; ELIZABETH DOLE, SECRETARY UNITED STATES DEPARTMENT OF TRANSPORTATION; FEDERAL AVIATION ADMINISTRATION; J. LYNN HELMS, ADMINISTRATOR; STATE OF CONNECTICUT; J. WILLIAMS BURNS, COMMISSIONER, CONNECTICUT DEPARTMENT OF TRANSPORTATION, Defendants	)	Civil Action No. H-83-225 TEC JUNE 21, 1983 CONSOLIDATED ACTIONS

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) the State Defendants hereby move the Court to dismiss these actions for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted.

The State respectfully requests seven days in which to file its memorandum in support of this action.

STATE DEFENDANTS

Joseph I. Lieberman
Attorney General

By /s/ Gerard J. Dowling
Gerard J. Dowling
Assistant Attorney General

CERTIFICATION

On this 21st day of June 1983, a copy of the foregoing was mailed to Donna L. Fatsi, and Augustus J. Simmons.

/s/ Gerard J. Dowling
Gerald J. Dowling
Assistant Attorney General
90 Brainard Road
Hartford, CT 06114
Tel. (203) 566-7070

ORDER

Based upon the full record of this case, including the State Defendants' Memorandum in Support of Its [sic] Motion to Dismiss the Complaints (filed June 28, 1983), the exhibits appended thereto, and the arguments of counsel in open court on August 15, 1983, the court concludes that these cases effectively constitute appeals from state court judgments and litigation of them before this forum is barred by the doctrine of *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), that collateral attack in this court on the judgment of the Connecticut Superior Court is barred by 28 U.S.C. § 1738, and that, in any event, the prior adjudication of these claims in *Simmons v. Wetherall*, 180 Conn. 587 (1980) bars their reassertion, because of the doctrine of res judicata. For all of the foregoing reasons, the state defendants' motion to dismiss the complaints in

Civ. Nos. H-81-778 and H-83-225 is GRANTED. It is so ordered.

/s/ Jose A Cabranes
Jose A. Cabranes,
U.S. District Judge
August 16, 1983, Hartford, Conn.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of December, one thousand nine hundred and eighty-three.

Present:

HONORABLE
WILFRED FEINBERG
Chief Judge

HONORABLE
HENRY J. FRIENDLY

HONORABLE
JAMES L. OAKES
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-v.-

ARTHUR B. POWERS, etc.,

Defendant-Appellee.

83-6257

(Filed
DEC 20 1983)

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-v.-

UNITED STATES OF AMERICA,
et al.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed as follows:

1. This appeal arises out of a dispute over title to and use of land adjacent to Bradley International Airport. It concerns two actions, filed by appellant in the United States District Court for the District of Connecticut, and directed against various state and federal defendants. The complaint in the first case, Civ. No. H-81-778, was filed in October 1981, and subsequently amended. On February 7, 1983, Judge Cabranes granted the federal defendants' motion to dismiss. Simmons appealed, and this court, by order dated June 9, 1983, dismissed the appeal for lack of jurisdiction because the dismissal of the claim against the federal defendants did not constitute a final judgment of the district court. We stated that, to pursue the appeal, Simmons would have to seek the entry of a final judgment as to the federal defendants, or await the determination of the claims against the state defendants.

2. On March 22, 1983, appellant filed the complaint in the second case, Civ. No. H-83-225. On May 23, 1983, Judge Cabranes granted a motion by the State of Connecticut to consolidate both cases. On August 16, 1983, Judge Cabranes dismissed the complaints in the consolidated actions. Simmons now appeals from that dismissal. We agree with Judge Cabranes that the doctrine of res

judicata bars the reassertion of these claims, already litigated in state courts. Simmons v. Wetherall, 430 A.2d 1295 (Conn. 1980).

3. The judgment of the district court is affirmed.

/s/ Wilfred Feinberg
Wilfred Feinberg, Chief Judge

/s/ Henry J Friendly
Henry J. Friendly,

/s/ James L Oakes
James L. Oakes,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of November, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE WALTER R. MANSFIELD,

HONORABLE JAMES L. OAKES,
Circuit Judges.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-against-

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

85-6087

(Filed NOV 22 1985)

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED.

We agree with the April 8, 1985, order of the district court dismissing appellant's claims on the ground of res judicata. We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should he seek once again to relitigate these same matters.

/s/ Wilfred Feinberg
Wilfred Feinberg, Chief Judge

/s/ Walter R Mansfield
Walter R. Mansfield,

/s/ James L Oakes
James L. Oakes,
Circuit Judges

Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

§ 4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase of condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub.L. 91-646, Title I, § 102, Jan. 2, 1971, 84 Stat. 1895.)